LEGALLY INDIA

ANNUAL REVIEW 2019

THE INLEGAL 50

- Top 100 Dealmakers of the Year
- Marquee & Prestige Firms, Profiled
- 63+ Busiest Indian & Foreign Firms
- Cap Markets: Riding out the Lull
- Insolvency: The Boom of Busts
- Talk About Sex: Gender Ratios at Top Firms

GLOBAL LEGAL MEDIA
STRATEGIC LAW FIRM MARKETING

A GLOBAL LEGAL MEDIA AND LEGALLY INDIA PUBLICATION

LEGALLY INDIA

Contents

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Welcome

Editor's Note

A major part of Legally India's core mission has always been transparency. When we first set up in 2009, the domestic legal market was largely shrouded in secrecy and could be understood only by tapping into an arcane flow of information and rumours spread via professional networks.

I would like to think that LI's original reporting and analysis has been an instrumental part in shining a light on the corporate legal industry and the wider profession, including litigation and legal education.

The InLegal 50 – India's first fully-transparent and objective ranking and analysis of the corporate law firm market – is our most ambitious project to date. It has been the work of several years now, and marks a significant evolution of Legally India on its 10th anniversary.

DATA-DRIVEN INTELLIGENCE

In much of the work we've done, data and information has been a key component, and I believe it to be the one of best antidotes to a widely-perceived lack of trust in the information that pervades the ecosystem, which includes too many paid-for and/or opaque law firm awards, rankings and directories.

The InLegal 50 is therefore an attempt to wipe the slate clean and start from a common, comprehensible and verifiable data-driven baseline.

But the InLegal 50 is not a ranking, in the traditional sense, nor a directory where firms never move between tiers. It is intended to be a living, breathing and dynamic snapshot of the legal market, where segments and classifications are expected to change, year-on-year, depending on firms' and their partners' performance.

On the corporate side, it includes data from 582 M&A, private equity (PE) and venture capital (VC) deals with a total valuation of $113bn announced from 1 April 2018 to 31 March 2019. This breadth of data has enabled us to produce never-seen-before analysis and classification of the relative M&A strengths of Indian corporate law firms, and allowed us to focus in particular on the individuals that get the deals done.

And while far from every corporate deal has been captured, this is the most representative sampling of deal activity in the Indian market to date (for reference, Thomson Reuters recorded $129bn India M&A deals in 2018).

Our analysis has also yielded an unprecedented listing of the Top 100 Corporate Dealmakers of the Year, giving an insight into the senior corporate bench strength of the top law firms.

Metrics and analysis of the capital markets space also form part of the InLegal 50, which for the first time also tracks the values of IPOs done to provide a fuller picture.

Taking into account the above data points, we have arrived at a clear demarcation of the legal market into Corporate and Capital Markets Marquee Firms, Corporate Prestige Firms and the Corporate Challengers in the M&A, PE and VC space.

And we are only getting started. Several major practice areas are not included in our metrics, such as disputes, infrastructure projects, finance, real estate and competition and commercial work. Going forward, we plan to gradually widen the types of deals we analyse.

We have also only scratched the surface of dispute resolution practices with our analysis on LegallyIndia.com from April 2018 of top Supreme Court law firms, and hope to be doing more to provide visibility on some of the many different courts, tribunals and highly private arbitrations.

Second, the picture captured even by M&A or VC league tables will never be fully complete. Apart from many deals never making it into the public domain (or clients not granting law firms permission to confirm their involvement), some firms are simply better at reporting their deals than others, and some simply don't feel the need to. While most bigger Indian law firms now have sophisticated business development and communications functions, we have aimed to level the playing field with the InLegal 50, where participation has been open to all with only a minimum of time needed to be spent by busy lawyers and teams.

In light of the above, the InLegal 50 remains deliberately and proudly a work-in-progress, which I foresee will only continue to grow and provide even more valuable insights and benchmarks to clients and lawyers who want to gain a better understanding of the corporate law firm ecosystem they operate in.

I encourage you to track our progress in our live league tables, at www.legallyindia.com/db and I hope you will share your feedback and thoughts any time.

Best regards
Kian Ganz - www.legallyindia.com

A Year of Corporate Plenty

The last year of M&A, VC and PE activity has been record-setting for Indian and foreign law firms

2018-19 Market Overview

"M&A is the mainstay of any small or large corporate firm's practice," states Shardul Amarchand Mangaldas Delhi corporate partner Amit Khansaheb, one of the InLegal 50's top dealmakers of the year. "M&A is always happening – bear or bull market – although valuations may differ, expectations may vary and people may put off plans from time to time," he adds.

In the 2018-19 Financial Year (FY), India has been nearly nothing but bullish on M&A, with the 12 months to 31 March 2019 having been one of the busiest years of mergers and acquisitions on record. According to Thomson Reuters, the 2018 calendar year had seen companies announce $129.4bn of India-related M&A activity, handily beating the previous record of $67.4bn from 2007.

A YEAR OF EXITS (AND ENTRIES)

The numbers have been buoyed by a raft of much-overdue exits by long-time investors and activity in the infrastructure and telecoms sector.

You could almost hear the collective sigh of relief from venture capital (VC) and private equity (PE) funds that made good on their investments via M&A, with the capital markets all but shut down in the 2018-19 financial and other financing hard to come by (see capital markets analysis below).

Walmart's high-profile buy of e-commerce major Flipkart may, in retrospect, have resulted in some buyer's remorse after it was quickly followed by the government's kneecapping of global players Walmart and Amazon by regulation to protect the domestic market. But it did little to reduce appetites (see our feature on largest deals below).

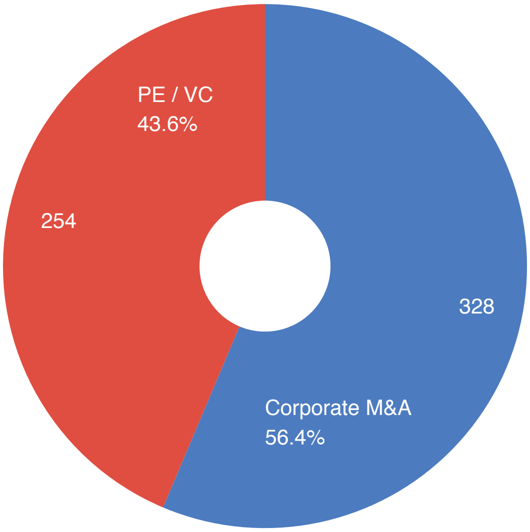
"There was a lot of activity in the M&A space – valuations were a little low, the capital markets were slow, and whenever capital markets is slow the entire market fundamentals changes," says a corporate partner.

But besides driving M&A, venture capital (VC) and private (PE) also provided lawyers with significant opportunities to work on new investments. Ignoring acquisitions by hungry funds, we have also captured 254 VC and PE investments in and relating to India, with values of nearly $15bn. At least 19 of those investments were larger than $200m, with two rounds – Swiggy and Star Health – exceeding $1bn.

INSOLVENT GREEN

Second, the 2016 Insolvency and Bankruptcy Code

InLegal 50:
Captures 582 corporate deals



(IBC) has begun to come into its own, despite some problems for early birds. The IBC was responsible for a smorgasbord of lucrative M&A activity in the last financial year: we tracked at least 17 insolvency mandates under the IBC framework, gifting law firms M&A deals with values of more than $20bn. They made up more than 20% of the total M&A values captured in our tables (see our full analysis below).

THE TIME FOR STUPID PRICES IS OVER

The Indian legal market has remained very price conscious and highly competitive on fees, according to most partners we've spoken to, though the days of intense underbidding following the earthquakes the Amarchand Mangaldas split have now passed.

"From 2015, and even part of 2017 saw a lot of stupidity because of personal egos and the obvious ramifications of the largest firm splitting in two and going at each others' throats," muses one partner. "2018 saw an end to the pricing stupidity because people were too busy to do stuff for stupid prices."

LEGAL OUTLOOK: ROSY

While some trepidation over the elections had led to investors covering the brakes, fearing a hung parliament, the results have buoyed the markets and the legal fraternity. Every single partner we've spoken to was optimistic, at least about the economy for the next few years, and are not expecting a recession any time soon.

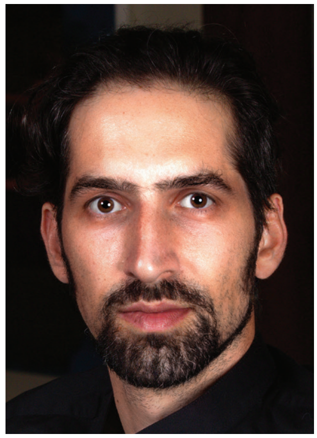
"I don't think so," says Link Legal India Law Services partner Manish Gupta about whether a crash is impending. "Indian market has done really well in terms of giving exit to investors. Even if we ignore the bigger thing of Flipkart, otherwise also, India has bettered its reputation in terms of giving exit and returns to investors; this has become more evident in the last two or three years."

"The long term fundamentals are there," adds Vishnu Jerome, partner of Jerome Merchant + Partners, but adds that "there's genuinely – if you see the debt market – a lack of liquidity. A lot of investments are not domestic money, but in domestic money there's a paucity of funds wanting to deploy."

"There are positive signs," opines Khaitan & Co partner Haigreve Khaitan about how Narendra Modi's uncontested win has been received by the business community. "One major multinational, which was looking at divesting and diluting, in fact decided not to divest." He adds that another financial sponsor told him recently to "please keep your team available now" for the next two years, in anticipation of a stream of upcoming deal activity.

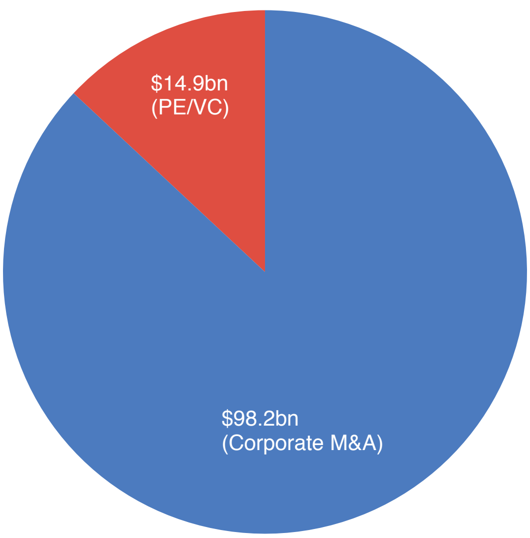
"I think it's going to be a busy time and a good time for India," said Khaitan.

For the law firms profiled in the following pages, those good times have already arrived over the past 12 months.



KIAN GANZ

Total $113bn M&A, PE and VC deals covered



Top M&A Deals of the Year

WALKART BROKE RECORDS

The Indian M&A deal of the year, both in terms of size and profile, was undoubtedly Walmart's acquisition of Indian Amazon-challenger Flipkart for $16bn, giving investors a record payout and the market a major boost (despite the government unleashing restrictive e-commerce rules, making the deal a bit less attractive in the short-term than it had seemed).

Khaitan & Co's Bangalore partner Ganesh Prasad, a long-time adviser of the company, bagged the instruction for Flipkart.

Shardul Amarchand Mangaldas' (SAM) corporate partner Raghubir Menon led the juicy mandate for Walmart - a deal that occupied at least 14 partners; international firm **Hogan Lovells** acted from San Francisco and Singapore.

A number of law firms also hovered around the periphery, with work coming from exiting investors (**Trilegal** for Naspers on its $2.2bn payday, **Argus Partners** for TR Capital, and **J Sagar Associates (JSA)** for eBay), and Cyril Amarchand Mangaldas provided some competition advice for Flipkart.

BHARTI DEAL TOWERS ABOVE REST

Bharti Infratel kept the Bharti group's trusted long-time adviser **AZB & Partners** Delhi and partner Gautam Saha and his team on call when it merged with Indus Towers – jointly owned by Bharti, Vodafone, Idea Group and Providence – to create a $14.6bn giant with more than 160,000 telecoms towers across India.

S&R Associates and partner Rajat Sethi benefited from their long-standing relationship with Vodafone yet again, alongside **Slaughter and May**. **Bharucha & Partners** advised Idea and **Nishith Desai Associates** got the piece for minority shareholder Providence.

LIC TAKES ON IDBI BANK

The two Amarchands – **Shardul** and **Cyril** – both acted on Life Insurance Corporation of India's (LIC) $4.4bn mega buy of IDBI Bank, via an open offer.

UPL'S STATESIDE FORAY

One of the largest outbound M&As from India saw agrochemicals player UPL buy the US' Arysta LifeScience Inc for $4.2bn in cash.

J Sagar Associates (JSA) and **Jones Day** were drafted in by UPL; **Platinum Partners** and **Cleary Gottlieb** acted for the target.

HUL AIMS FOR HORLICKS

When Hindustan Unilever decided to swallow GSK's Indian Horlicks brand and business for $3.8bn, **Cyril Amarchand Mangaldas** (CAM) was ready, with **AZB** advising GSK; foreign firms **Baker & McKenzie** and **Slaughter and May** also got their dues.

DISNEY GOES FOX

The $71bn Disney buy of Fox could have involved more than $1bn of assets in India, but its value is not reflected by our methodology at present, since no local valuation is available. But its local advisers – **AZB** (advising both sides from Mumbai and Delhi) and **Talwar Thakore & Associates** on competition law would have had a meaty mandate from it.

OTHER MEGA DEALS

- $3bn Gruh Finance-Bandhan Bank merger, with **Argus**, **SAM** and **AZB**.
- $2.1bn Schneider sale to Larsen & Toubro, with **Trilegal**, **AZB**, **Khaitan**, **SAM** and **Economic Laws Practice (ELP)**, and foreign advice by **Cleary Gottlieb Steen & Hamilton** and **Bredin Prat**.
- $2.1bn intra-PSU sale of Rural Electrification Corporation by Power Finance Corpation, with **CAM**, **JSA** and **L&L Partners**.
- $1.66bn ReNew Power Ventures buy of Ostro Energy with **Trilegal** and **CAM**.
- $1.37bn 3-way merger between Baroda, Vijaya and Dena banks involved both **CAM** and **SAM**.
- $1.2bn buy of Ultratech Cement of Century Textiles' cement operations, with **Khaitan**, **Trilegal** and **Vaish Associates**.
- $1.16bn Tata-GIC-SSG consortium buy into GMR Airports, with **Link Legal India Law Services**, **SAM**, **L&L**, **CAM**, **JSA**, **Nishith Desai**, **Trilegal** and **Vaish Associates**.
- $1bn buy by France's Teleperformance of India's Intelenet from Blackstone, saw **Platinum Partners**, **JSA**, **Paul Hastings** and **Simpson Thacher & Bartlett** benefit.
- $1bn Radian Life Care – Max Healthcare merger drafted in **L&L** and **AZB**.

The Insolvency Machine

At least 17 insolvency deals under the Insolvency and Bankruptcy Code brought significant work to Indian law firms in our tables, with deal values of $20.5bn.

And although IBC sales are basically takeovers of one company by another, for lawyers the process can be very different from a vanilla M&A transaction.

For one, the IBC process has been fraught with huge delays, as an "entire ecosystem is getting used to the fact that people can lose money, that promoters can lose money," explains one partner. In part, the issue can be about ego: a promoter doesn't want to give up their company, and therefore interferes in the process with legal and other challenges, despite in most cases not even being allowed to regain control of the company.

L&L partner Bikash Jhawar explains that the system has responded well overall and would become more efficient, but it had not been "prepared to respond to the amount of cases or even legal argument that came up – bankers, lawyers, judicial systems – all were flooded with matters and a regular feast of arguments on technicalities".

There are usually at least three meaty roles in an insolvency, and each of them generally pay well, though in very different ways. "Charging is similar to what you would for a complicated M&A transaction," says one corporate partner, adding that bankruptcies will also draw in legal expertise in antitrust, litigation and lots of other practice areas.

THE RP

"The resolution professional (RP) mandate is, from an earnings perspective, maybe the best mandate," says one partner who has been active in the space.

An RP basically steps in as *de facto* interim CEO to run the bankrupt company while it's being saved. Parachuting into a failing business, trying to keep it going and finding ways of giving creditors their dues is a tough job, and RP's charge appropriately astronomical fees, dwarfing even lawyers'. However, the role is also largely a custodial one for the RP, and for lawyers this can be a gold mine of steady, predictable advisory work, explains the partner.

A law firm working for the RP could be advising the RP on a daily basis on nearly all company business and matters, on top of issues relating to the insolvency process itself. And so, the expected fees can be solid, predictable and keep teams occupied for a long time (more below).

As an added bonus, it is a very low-risk mandate: since RP's decision-making power is limited, their appointment does not generally get challenged in courts.

But in the mega-insolvencies it can be hard for anything but the largest firms to play ball in that court, depending on how the RP likes to run their ship. "For RP [mandates], you need a large bench strength," comments a partner at a small firm, but adds that work does exist for smaller players particularly in advising investors, the banks or on ensuing litigation.

THE COC

The committee of creditors, also referred to as the CoC in IBC-speak, is also an interesting role for a law firm. If not generally as lucrative as the RP mandate, it can bring in significant work for other departments.

The COC is usually a committee of banks and other creditors of the insolvent company, who will need negotiate hard with any potential buyers, saviours and vultures about commercials, to ensure they get as much of their money back as possible without sinking the company and within the ambit of the insolvency framework policed by the court.

2018-19'S LARGEST INSOLVENCY DEALS AND THE ADVISERS

The three largest insolvencies, as well as several big ones, were all in the steel sector.

JSW Steel picked up Bhushan Power for $2.8bn, with a little help from L&L Partners, Cyril Amarchand Mangaldas (CAM) and Shardul Amarchand Mangaldas (SAM).

The $7bn ArcelorMittal-Nippon Steel corporation distressed takeover of Essar Steel, involved L&L for the buyers, S&R Associates as co-counsel for ArcelorMittal, while CAM and SAM acted for resolution professional and committee of creditors respectively.

Bankrupt Bhushan Steel was snapped up by Tata Steel for $7.3bn, with SAM advising the Bhushan Steel, AZB was drafted in by Tata Steel and L&L acted for the resolution professional.

But, the role of the COC has also been exposed to numerous legal challenges. While law firms' litigation partners may generally welcome such excursions to the bench, clients will be less excited.

THE BIDDERS

Acting for a bidder in an IBC resolution is much more akin to traditional M&A, with an edge. Seeing as it's usually a competitive process, in the words of one partner, "sometimes you win, sometimes you lose".

Besides the anti-climactic disappointment for a law firm that acts for a 'loser' in a bid, it can mean forgoing a chunk of billings. "The gap [in fees] is likely to be significant," says AZB & Partners' Ashwath Rau, who is also top of our Corporate Dealmakers of the Year. "Post bid acceptance, there is a lot of legal work to be done – not just the NCLT [National Company Law Tribunal] process, but working with the RP to 'close' under the bid, and typically there is also a lot of work to be done post-closing."

There are only few companies or investors who will be able to stomach delaying their desserts – and earmarking the funds – for as long as many of the big resolutions have taken: nearly 700 days now in several cases.

"I am not sure how many [companies] are looking at [insolvency] as a great avenue to undertake M&A transactions because people don't have full visibility on the time lines in such a process," says one corporate partner at a large firm. "There are only a few buyers who will venture into such a process, rather than all of them. As time passes, people will get some more clarity."

THE LAW FIRM PLAYERS

While nearly all law firms have been interested in capturing a piece of the insolvency pie, expertise and the accompanying adventuring spirit has been showcased the most by the large firms.

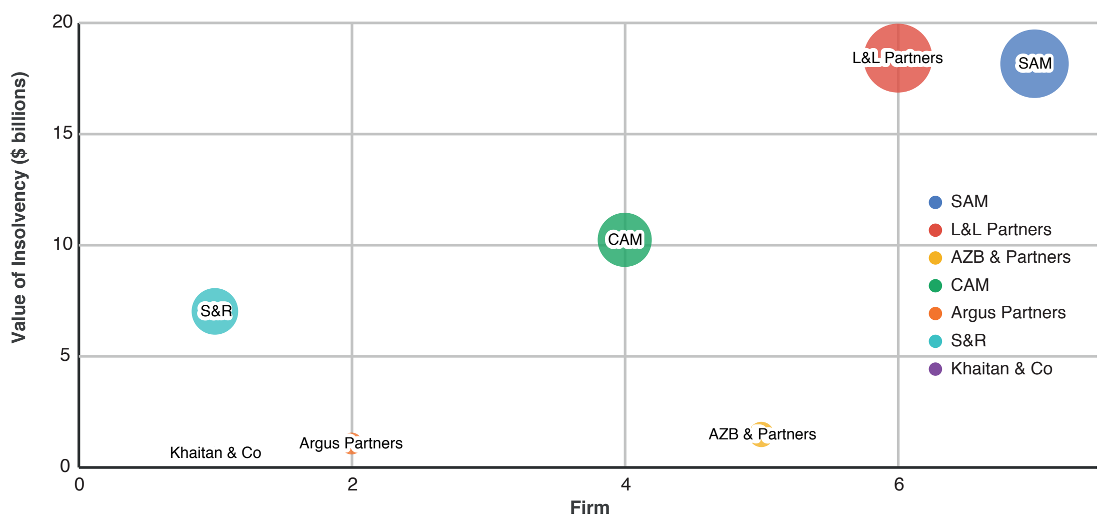
Shardul Amarchand Mangaldas has been present on pretty much all of the mega insolvencies with a total count of seven and aggregate values of $18bn. Two of those instructions were for the committee of creditors, and two for the resolution professional.

L&L Partners has been neck-to-neck with SAM, having acted on six insolvencies worth more than $18bn. Three of its mandates were for the resolution professional, while the other half were for steel majors that had been victorious in their bids (with two of these for the voracious JSW Steel, alone).

AZB & Partners, in its five insolvency mandates, acted for the resolution professional twice, and for its close clients Tata Steel and Reliance Industries in two others.

Cyril Amarchand Mangaldas, on the other hand, has thrown its hat in the ring for the committee of creditors in three of its four insolvency mandates, and once for the resolution professional.

Number of Insolvencies (horizontal) vs Deal Size (vertical axis)



The *Legally India* Corporate Dealmakers of the Year

A law firm is only ever as good as the collection of its partners. And (nearly) all top transactional partners will be quick to tell you that they are only as good as their team. The analysis that follows is therefore a recognition not just of individual partners' rainmaking and execution abilities, but also a testament to leadership and teamwork from everyone involved.

We have compiled the 20 busiest corporate partners at Indian law firms according to the number of deals they have led on (depending on which partner was mentioned first in a press release or deal report). Deal values are used as tie-breakers.

But beyond just celebrating the individuals, this also gives a fantastic insight into what makes the top law firms tick.

1. **AZB & Partners** Mumbai-based partner **Ashwath Rau** topped the total deal counts this year, with 27 deals worth more than $11bn, of which he led on 25.

"If you look at it from my perspective, 2018 was my busiest year ever," says Rau, in retrospect. "I've never had a busier year in 20 years of practice. The closest I came was 2007, in the previous financial cycle [when still at Cyril Amarchand Mangaldas]."

Rau notes that the total internal tally, including undisclosed or otherwise not reported deals, stands at around double that, above 50 (other high-deal-volume partners too have cited similar figures, ranging from our league tables under-reporting between 25% to 50% of deal volumes).

The secret to executing so many deals is having a solid team and, according to Rau, also lots of senior colleagues. He says he also works with partners outside his group – "the partner configuration is much larger" than just his immediate team. That said, the core team in his partnership leverage pyramid consists of around 44 lawyers, including six partners, who are involved in many of his mandates.

Rau's list of marquee deals includes such blockbusters as Disney's buy of Fox, which had a significant (though not disclosable) India element, and four mandates for Reliance Industries alone: its $2.4bn East-West Pipeline sale to Brookfield, its $740m insolvency buy of Alok Industries, a $180m buy of an AI education platform Embibe, and a $75m purchase of a US IoT company Radisys. Also: for Schneider Electric on its $2.1bn buy of an L&T business, and the $1bn Radiant Life Care merger with Life Healthcare. The list is longer, but we'll name check some of his other clients: Larsen & Toubro, Max India, Aditya Birla Capital, plus super-PE-funds Apax, KKR and Bain Capital.

Perhaps counter-intuitively, one of the most (in)famously busy deal makers in the Indian M&A market, AZB Mumbai managing partner Zia Mody, only has three reported deals against her name in our league table.

We understand that she would have been actively leading in several public market M&A deals and has been peripherally involved in many others, though in her role as managing partner she is usually not credited as leading on deals or taking deal 'credit', if attending one meeting on a deal, for instance.

2. **Shardul Amarchand Mangaldas** (SAM) partner and M&A national practice head **Raghubir Menon**, based in Mumbai, has led on at least 16 corporate deals in 2018-19. His aggregate deal values, including Walmart's little Flipkart purchase, stands at $36bn.

There was also the mandate for Bandhan Bank in the $3bn Gruh Finance acquisition, three deals for Paytm parent company One97 Communications, two investments for Amazon, and regular big-ticket work for funds clients such as Blackstone, Goldman Sachs, Temasek, General Atlantic and Sistema.

Like Rau, he has a big team of around 19 other fee-earners, including three salaried partners.

3. **Themis Associates** Mumbai-based partner **Siddharth Manchanda** has 15 deals, of which 14 are VC-investment related. Themis is well-known for having started out with a close relationship to Sequoia (and 15 out of 16 of Sequoia's publicly disclosed deals still had Themis advising it). But only six of Manchanda's mandates are for Sequoia Capital, with the rest spread across funds such as Unilever Ventures, Kalaari Capital and at least five mandates for young companies taking investments.

4. **AZB**'s second partner (out of four) in the top 20 is Delhi's **Gautam Saha**, against whom we have tallied 13 corporate transactions that he led on. For many years now, Saha has more or less been the Bharti telecoms conglomerate's main M&A man, reaping the $14.6bn Indus Towers deal in the last year. His other regular corporate clients included Cisco Systems, American Tower Corporation in the telecoms space (which bought $400m of tower rights from Tata Teleservices), as well as a large number of marquee funds such as

Goldman Sachs and Nokia Growth Partners, and he also led on the only reported Sequoia deal not handled by Themis in our league tables (its $110m Series C in CarDekho). He also counts a wide roster of country's development banks and International Finance Corporation (IFC) as his regular clients, assisting them on investments and financings.

5. **Link Legal India Law Services** (LLILS) Delhi deal maker **Manish Gupta** had led on 13 deals worth $1.6bn, including for a number of funds – most regularly, Lightspeed India Partners on three deals; tech company Sharechat; and Chinese Apple-competitor Xiaomi on its India investments. Leveraging LLILS' projects focus, he also acted for GMR Airports on the huge $1.16bn stake sale to a trio of investors.

6. **SAM** National Capital Region (NCR)-based senior partner **Amit Khansaheb** has 13 deals he led on. Khansaheb counts a variety of companies as his top clients, including darling start-up Byju, which had retained SAM on at least three funding rounds totalling nearly $600m in 2018-19. A future M&A mandate from Byju at unicorn valuations seems quite a likely outlook for Khansaheb.

7. **SAM** Bangalore-based partner **Siddharth Nair** (whom we had first reported had resigned from the firm on 30 April 2019) had acted on 13 recorded deals, of which he led on 12. Apart from having been the man in the city on Walmart's Big Bangalore Acquisition, he has primarily worked on VC-related mandates. For funds, his closest public clients are Norwest Venture Partners (in four deals) and Westbridge Capital (in two), while on the sexy start-up side he counts Norwest-backed Swiggy as a client (which did one $210m round and another giant $1bn fundraise), as well as food delivery start-up Faasos (which did three sub-$20m rounds of fundraising).

8. **AZB**'s Bangalore-based **Srinath Dasari**, meanwhile, comes in 8th in terms of busy-ness, with 12 deals valued at $420m, of which 10 are M&A for companies such as Wipro (on its $117m buy of the India operations of outsourcer Alight Solutions), Krishna Institute of Medical Sciences (which took $130m of investor cash) and Mahindra CIE Automotive on its $126m acquisition of Aurangabad Electricals; he acted for funds in investments on two of his deals.

9. **L&L** Mumbai partner **Bikash Jhawar**, had worked on at least 11 deals and led on 10. In particular in the last year, he has been leading the charge at the firm on insolvency work, bumping up his total deal values to more than $11bn. He led on both of JSW Steel's successful buys of Bhushan Power ($2.8bn) and the smaller Vardhman Industries ($21m), and for the resolution professional on the $1.16bn Ultratech buy of Binani Cement. He was also on the large L&L team helping the ArcelorMittal-Nippon Steel consortium that bought Essar Steel for $7bn. Besides insolvencies, his more vanilla corporate clients of the year included Adani Transmission (on a $33m power transmission business buy) and Laptev Finance (which completed a $124m acquisition)

10. **L&L** Mumbai's **Amit Shetye** (who will be joining US fund Global Infrastructure Partners (GIP) in-house in the coming months, as we had first reported) has led on at least 10 deals, with a strong focus on VC funds. Apart from his close relationship with GIP, he advised Lighthouse Funds on at least six rounds, ranging from $14m to $36m. On the corporate side, he also advised Medall Healthcare when it was bought for $212m by Nasdaq-listed Alpha Capital Corp, and Capital Foods – the maker of Ching's Secret instant noodles – when it was bought for $54m by General Atlantic.

11. Out of **Platinum Partners**' 13 deals in the 2018-19 fiscal, Mumbai-based partner **Ankit Majmudar** was present on 10 and led on nine of

A NOTE ON THE DATA

Our Top Dealmakers data is an attempt to give credit where it's due and recognise the individual centres of excellence and strength in the top law firms. But it does not purport to present an absolutely authoritative picture – at least, not yet. There are several potential things readers should bear in mind.

First, deal credit may get awarded differently by different firms (and some firms have a propensity not to name or confirm partner names at all). Second, our methodology obviously gives an edge to firms that have submitted more deals (though the many partners from smaller firms in the list is a good sign).

Finally, this is making no statement on the quality of someone's work. But the fact that clients trust them, should count for something.

them. He advised Mumbai BPO Intelenet on its sale to French outsourcer Teleperformance for $1bn from Blackstone. He has also acted for Kedaara Capital on its joint buy of Vishal Mega Mart for $709m, and its sale of India's largest PET manufacturer, Manjushree Technopack, for $326m.

12. **Veritas Legal** Mumbai-based founder **Abhijit Joshi** (who was a senior partner at AZB before going independent in 2014) has led on nine corporate deals in 2018-19, including advising Leela hotels on its $576m sale to Brookfield, as well as venture funds Partners Group and Kedaara Capital. He also advised Aditya Birla in its $590m sale of Birla More supermarkets to Samara Capital and Amazon.

13. **AZB**'s Mumbai-based partner **Sai Krishna Bharathan** led on nine deals with total values of $690m. The three largest of these were Kiran Energy Solar Power's acquisition by Hinduja Power for $143m, Brazilian mining giant Gerdau's sale of a subsidiary, which was valued at $120m in India, and IIFL's wealth fund on a $110m fundraise.

14. **Jerome Merchant + Partners** Mumbai-based **Vishnu Jerome** (another former AZB partner) was involved in 10 of the firm's 19 deals. He has been the go-to adviser for VH Capital on three of its deals (ranging from $19m to $100m), advised tech start-up Tapzo on its $40m sale to Amazon, and Centum Financial on its $114m buy of Larsen & Toubro's supply chain business. Jerome also got the nod from General Electric Company to advise on the India leg of a Chinese electric motors maker.

15. **Samvad Partners**' partner **Neela Badami** advised on 10 deals, primarily in the start-up and VC space, making her a formidable presence in Bangalore, where she is based. Her clients that transacted in 2018-19 include food delivery company Foodpanda that bought Holachef, Blackbuck Logistics, which got $27m from Sequoia, as well as mattress maker Wakefit Innovations, and car trading company Truebil. On the funds side, she has worked on at least two deals for the Omidyar Network.

16. **Desai & Diwanji** Mumbai partner **Siddharth Mody** has had a busy year leading on at least nine deals, of which eight have been VC-investment-related. Regular clients included Fosun, which was involved in five of his deals (with the biggest disclosed one being a $30m Series C round by Fosun, Ventureast and Endiya in digital lender Kissht), as well as Future Retail, Kalaari Capital, Omnivore Partners and start-up Lightbox.

17. **Cyril Amarchand Mangaldas** (CAM) eponymous managing partner **Cyril Shroff** needs no introduction. Despite spending considerable time on management, he led on eight deals, which include many of CAM's biggest. Hindustan Unilever turned to Shroff in its $3.8bn buy of GSK's India Horlicks business; he advised Fortis Healthcare on its $1.1bn sale to IHH-Healthcare Berhad; and Heinz India on its $626m sale to Zydus Wellness. Reliance Industries' telecoms upstart Jio also called on him when it bought a majority stake in Hathaway Cable & Datacom for $399m. And Adani Ports - a client whose promoters are literally part of the Shroff family now, by marriage - entrusted him with a $275m port purchase.

18. The practice of **L&L**'s **Sundeep Dudeja** has a strong slant towards advising healthcare corporates. He led for Fortis Healthcare on its $653m buy of Singapore's RHT Health Trust, and advised Apollo Hospitals on a $75m investment round and its restructuring. He counts Amansa Capital and Steadview Capital his regular funds clients, and when a consortium invested $1bn in Star Health, he acted for Madison Capital. He was also one of the many partners involved in several of L&L's large insolvency mandates, bumping up his total deal values to $17bn. He was involved in at least 11 deals, of which he led on eight.

19. The second partner from VC-start-up powerhouse **Samvad** is **Ashwini Vittalachar**, who led on eight deals worth $908m. Six of those were in the VC space with marquee clients such as Delhivery (currently on its $413m Series F) and Zomato (which had at least three deals it had instructed Vittalachar in over the time period). She also advises PolicyBazaar that got $238m from Softbank. On the VC side, she counts Fundamentum as a regular client.

20. **Veritas Legal**'s second deal maker in the top 20, partner **Nandish Vyas**, racked up 10 deals with values of $1.8bn, of which he was the firm's lead partner on eight. His regular clients include the fund TPG, for which he acted in three deals, and he also advised Prabhat Dairy on its $237m slump sale Tirumala Milk.

TOP 100 CORPORATE DEALMAKERS OF THE YEAR

#	Lawyer	Firm	Number of deals led	Value of deals led ($m)	M&A	PE/VC
1	Ashwath Rau	AZB & Partners	25	8,102	21	6
2	Raghubir Menon	Shardul Amarchand Mangaldas	16	20,896	8	8
3	Siddharth Manchanda	Themis Associates	15	298	1	14
4	Gautam Saha	AZB & Partners	13	15,343	7	6
5	Manish Gupta	Link Legal India Law Services (LLILS)	13	1,609	3	10
6	Amit Khansaheb	Shardul Amarchand Mangaldas	13	629	7	7
7	Siddharth Nair	Shardul Amarchand Mangaldas	12	1,389	2	11
8	Srinath Dasari	AZB & Partners	12	421	10	2
9	Bikash Jhawar	L&L Partners	10	4,141	10	1
10	Ankit Majmudar	Platinum Partners	10	2,728	8	2
11	Amit Shetye	L&L Partners	10	418	4	6
12	Abhijit Joshi	Veritas Legal	9	1,967	6	3
13	Sai Krishna Bharathan	AZB & Partners	9	693	4	5
14	Vishnu Jerome	Jerome Merchant + Partners	9	245	5	5
15	Neela Badami	Samvad Partners	9	68	2	8
16	Siddharth Mody	Desai & Diwanji	9	60	1	8
17	Cyril Shroff	Cyril Amarchand Mangaldas	8	6,200	8	
18	Sundeep Dudeja	L&L Partners	8	3,028	8	3
19	Ashwini Vittalachar	Samvad Partners	8	908	2	6
20	Nandish Vyas	Veritas Legal	8	468	5	5
21	Ashwin Ramanathan	AZB & Partners	8	212	5	4
22	William Vivian John	L&L Partners	8	100	8	
23	Apurv Sardeshmukh	Legasis Partners	8	46	3	6
24	Lalit Kumar	J Sagar Associates (JSA)	7	5,205	2	5
25	Darshika Kothari	AZB & Partners	7	1,912	7	
26	Sameer Sibal	Jerome Merchant + Partners	7	182	1	7
27	Rachael Israel	S&R Associates	7	107	3	5

#	Lawyer	Firm	Number of deals led	Value of deals led ($m)	M&A	PE/VC
28	Vinati Kastia	AZB & Partners	6	5,013	3	3
29	Haigreve Khaitan	Khaitan & Co	6	4,196	7	
30	Vineet Shingal	Khaitan & Co	6	211	3	3
31	Gopika Pant	Indian Law Partners (ILP)	6	125	4	2
32	Vivek K Chandy	J Sagar Associates (JSA)	5	16,465	3	2
33	Reeba Chacko	Cyril Amarchand Mangaldas	5	1,266	3	3
34	Deepak THM	L&L Partners	5	420	3	2
35	Anil Kasturi	AZB & Partners	5	298	6	2
36	Sidharrth Shankar	J Sagar Associates (JSA)	5	148	3	2
37	Vaidhyanadhan Iyer	AZB & Partners	5	34	4	2
38	Probir Roy Chowdhury	J Sagar Associates (JSA)	5	28	1	4
39	Nivedita Nivargi	Samvad Partners	5	15		5
40	Upendra Nath Sharma	J Sagar Associates (JSA)	5		4	1
41	Siddharth Raja	Argus Partners	4	16,006	2	2
42	Vaibhav Parikh	Nishith Desai Associates	4	15,606	1	3
43	Rajat Sethi	S&R Associates	4	14,600	4	
44	Krishnava Dutt	Argus Partners	4	4,063	4	
45	Akila Agrawal	Shardul Amarchand Mangaldas, Cyril Amarchand Mangaldas	4	2,193	4	
46	Iqbal Khan	Shardul Amarchand Mangaldas	4	2,173	4	1
47	K Venkat Satyanarayana	Link Legal India Law Services (LLILS)	4	537	2	2
48	Roxanne Anderson	AZB & Partners	4	500	6	4
49	Amritha Salian	Themis Associates	4	338		4
50	Anand Shah	AZB & Partners	4	273	4	2
51	Rajendra Barot	AZB & Partners	4	210	5	
52	Sakshi Mehra	Shardul Amarchand Mangaldas	4	176	4	
53	Vandana Sekhri	Cyril Amarchand Mangaldas	4	141	3	3

TOP 100 CORPORATE DEALMAKERS OF THE YEAR (CONTINUED)

#	Lawyer	Firm	Number of deals led	Value of deals led ($m)	M&A	PE/VC
54	Kalpataru Tripathy	KT Advisors	4	130	3	1
55	Darshan Upadhyay	Economic Laws Practice (ELP)	4	77	2	5
56	Priyadarshani Sherchan	Rajaram Legal	4	60		4
57	Viral Mehta	S&R Associates	4	41	2	2
58	Vineetha MG	Samvad Partners	4	40	1	3
59	Rashi Kapoor Mehta	Universal Legal Advocates	4	20	2	2
60	Aneesh Gupte	Desai & Diwanji	4	15	1	4
61	Charandeep Kaur	Trilegal	4	14	4	1
62	Yogesh Singh	Trilegal	3	16,554	2	1
63	Anoop Rawat	Shardul Amarchand Mangaldas	3	7,903	3	
64	Nisha Kaur Uberoi	Trilegal	3	4,460	5	
65	L Viswanathan	Cyril Amarchand Mangaldas	3	1,790	4	
66	Nishchal Joshipura	Nishith Desai Associates	3	1,603	2	2
67	Santosh Janakiram	Cyril Amarchand Mangaldas	3	1,175	3	
68	Niladri Maulik	AZB & Partners	3	632	5	1
69	Akhil Bhatnagar	Khaitan & Co	3	563	2	1
70	Shreevardhan Sinha	Desai & Diwanji	3	405	1	2
71	Archana Rajaram	Rajaram Legal	3	328	2	1
72	Abhishek Guha	Shardul Amarchand Mangaldas	3	305	2	2
73	Ajay Bahl	AZB & Partners	3	293	6	
74	Tushar Raut	Veritas Legal	3	184	5	3
75	Manvinder Singh	J Sagar Associates (JSA)	3	181	1	2
76	Vikram Raghani	J Sagar Associates (JSA)	3	160		4
77	Mahesh Devaiah	MD&T Partners	3	153	4	
78	Akshay Jeet Bhat	Cyril Amarchand Mangaldas	3	136	1	2
79	Gaurav Dani	IndusLaw	3	129	2	1
80	Niren Patel	Khaitan & Co	3	113	4	

#	Lawyer	Firm	Number of deals led	Value of deals led ($m)	M&A	PE/VC
81	Mohit Saraf	L&L Partners	3	61	3	1
82	Arun Prabhu	Cyril Amarchand Mangaldas	3	57	3	
83	Deepak Joyce	Joycelaw	3	23	1	2
84	Shyam Pandya	Economic Laws Practice (ELP)	3	7		5
85	Prashant Jain	Samisti Legal	3	3	2	1
86	Sanjeev Adlakha	S&R Associates	3	1	1	2
87	Samuel Mani	Mani Chengappa & Mathur, Mani Chengappa Mathur (MCM Law)	3	1		3
88	Nilanjana Singh	AZB & Partners	3		5	1
89	Sapan Gupta	Shardul Amarchand Mangaldas	2	4,400	1	1
90	Zia Mody	AZB & Partners	2	3,000	3	
91	Harsh Pais	Trilegal	2	2,760	2	
92	Aakash Choubey	Khaitan & Co	2	2,338	2	1
93	Dina Wadia	J Sagar Associates (JSA)	2	2,166	1	1
94	Suhail Nathani	Economic Laws Practice (ELP)	2	2,100	1	1
95	Nivedita Tiwari	Cyril Amarchand Mangaldas, Shardul Amarchand Mangaldas	2	1,682	1	1
96	Arun Balasubramanian	Freshfields Bruckhaus Deringer	2	1,400	1	1
97	Sridhar Gorthi	Trilegal	2	1,399	1	1
98	Alina Arora	L&L Partners	2	1,293	2	
99	Abdullah Hussain	L&L Partners	2	1,160	4	
100	Vaibhav Kakkar	L&L Partners	2	1,100	6	4

Source: Number of reported deals where a partner was mentioned first in the report. Ranked by number of deals, then value.

Top Corporate Law Firms

SIZE DOES MATTER

The proof of most things lies in the pudding, and for a good corporate lawyer, your pudding begins and ends with the kind of work that clients entrust you with.

In evaluating the performance of corporate law firms, a good picture can therefore be painted by the number of deals a law firm and its lawyers have acted on per year, coupled with the size of those deals.

Deal size is often a useful yardstick about the quality and depth of advice that a firm can offer at the top tier. Most companies looking to spend hundreds of crores on their latest acquisition or investment, are sophisticated consumers of legal services and will be keen to ensure they get the best legal advice. Repeat business from such clients should count, at least in part, as a seal of approval of a firm's service levels (though the larger firms' greater headcounts do give them an inherent advantage there, purely in terms of volume and the types of deals their bench can handle by throwing fee-earners at a transaction). That is not to say that good service does not exist amongst the mid-tier and smaller deals (though, by some accounts, quality there can vary more widely).

But the absolute aggregate values of deals done by each firm – so preferred by most legal league tables – does not paint a terribly useful picture. Should a $4bn deal really be twice as 'valuable' to a law firm as a $2bn deal? By this yardstick, a single giant deal can distort the statistics, without the fees, complexity or the work involved necessarily being proportional.

Which is why, after many conversations with leading corporate lawyers, the InLegal 50 classifies corporate M&A and private equity/VC deals by value into Big Deals above $50m and Mid-Cap deals below $50m.

In terms of fundamental complexity, there is not necessarily a difference between a $200m deal or a $1bn deal, though the billion dollar club nearly always brings with it a certain prestige.

A $1bn+ deal is "typically a lot more high profile, and it involves clients who have the kind of war chest to write a check of a billion dollars", explains one corporate partner who has acted on their share of such deals. "It is a lot more cross border, a lot more parties are involved, there is more than one accounting firm and financial adviser. And at some level, the sophistication of the client involved is a notch above [lower value deals]."

MONEY MATTERS

The other side of the coin, which is not often talked about, is in the money. There is not a lot of transparency on how much corporate lawyers charge in India, and only few law firms regularly follow a billable hours model.

One partner says that even estimating ballpark fees across the market is "impossible" – "every lawyer/firm charges differently".

That said, there are ranges. The mega deals can see lawyers bill crores of Rupees: one partner says Rs 3 to 4 crores ($430,000 to $575,000) fees are average for top tier deals of at least $100m to $150m of investment.

"For big M&A, it is a function of time and complexity and, more often, [the] fixed fees model does not work," explains a partner. "The fees may reach the crore figure basis [from] the hourly rates and the client then asks for some volume discount."

Fees drop rapidly for smaller M&A deals at around the $10m mark, which can see billings ranging from Rs 10 to 25 lakh according to several top corporate partners.

For deals that are on the everyday venture capital (VC) or early seed-round spectrum, those fees could be anything from Rs 2 to 10 lakh, depending on the firm.

"I think it's kind of an open secret that VC work isn't the most lucrative unless you're doing volumes of work, and that's what everyone tries to do," explains one specialist VC partner.

PIPELINE STRATEGIES

But some of that early-stage funding work by lawyers can also lead VC-focused law firms into more significant later-series investment rounds, where fees can pick up.

Advising start-ups in early stages also commands lower fees but it also increases the likelihood of being involved in those same investors' future exits.

In other years with more liquid capital markets, law firms' work-progression pipeline for such clients would have inexorably led towards an initial public offering (IPO). In the high times, this would have been of benefit to the firms that have large capital markets practices, of which there are only a small

handful (see section on capital markets below).

And so, in the last financial year, most such major exits took place via M&A, but here too there is no guarantee for a mid-market or even top-tier firm that another firm won't come along and snatch the most lucrative mandate at the final stage, client loyalty for taking a haircut in the early days be damned.

In any case, trying to capitalise on the booming start-up sector, particularly in techy cities such as Bangalore, remains a key and powerful component of most top firms' strategy. The full-service firms that have the width to continue offering services from birth, to adolescence and to adulthood (and eventual death) of a company, are best-placed there.

On the other side of the spectrum, a few of the larger multi-national private equity houses pay their advisers well enough to make the funds practice lucrative outright (though most of the Marquee Firms have firmly parked themselves in that space).

A similar international dimension applies for nearly all deals, of course: while domestic clients have been driving fees down, foreign and multinational clients will often be happy to pay double the local fees, after conversion from US Dollars.

In short, corporate, PE and VC practices often have very different profiles and profitability, but they also go together like peanut butter and jelly. Most top corporate lawyers and firms therefore have corporate, funds and start-up clients in their strategic corporate mix.

HOW THE DATA WAS CRUNCHED

With a number of charts, described over the following pages, we have attempted to provide the most visual overview possible of the large swathe of data collated.

Our submissions process has been open throughout the last year (without charging any fees to participate or giving preferential treatment), and our methodology has been shared transparently, though these are a work-in-progress and will continue to be fine-tuned based on market feedback.

Some points to note about the deals that have been captured:

- Deal dates are generally the earlier of the first media report of a deal or the public announcement date, if available.
- Deals must have been publicly disclosed in a company press release or reported in the mainstream media, with deal values generally tracked from those deal reports (or provided a client has given permission for the deal value to be disclosed).
- Deal values reflect the consideration or investment made, in US Dollars, as publicly disclosed or reported. Deal values are only included for deals that i) primarily took place in India, or ii) involved an Indian entity as the main target, acquirer or seller, or iii) where the deal value for the Indian leg of the transaction has been disclosed separately.

CORPORATE M&A DEALS

1. These include all transactions where there is:
   - 1.a. change of control of the business, or
   - 1.b. strategic minority investment by a non-private equity or venture capital business.
2. Internal corporate restructurings, share buybacks and similar transactions are excluded.
3. Minority purchases of less than 25% of publicly-traded shares are excluded.
4. Sales or PE investments in projects where the predominant underlying assets are roads or real estate, are currently excluded, even if they took place via M&A.

PE/VC DEALS

All private equity (PE) and venture capital (VC) investments in Indian companies or by Indian funds are included, provided they meet the above publicity requirements.

LEAD PARTNERES

This is the distinct number of partners at a firm who have led on at least one corporate deal. These are customarily mentioned first in firms' deal reports and reflect a firm's senior corporate partnership, who lead deals and have the closest relationships with their clients.

The Marquee Corporate Firms

The biggest beneficiaries of the 2018-19 flurry of M&A and investment are revealed in our analysis of the differing practice profiles of domestic law firms, which allows for an objective grouping into different market segments.

We have identified seven Marquee Corporate Firms from the data, which stand clearly apart in the Indian corporate market from the rest by most metrics. In alphabetical order, the Marquee Corporate Firms are **AZB & Partners**, **Cyril Amarchand Mangaldas** (CAM), **Shardul Amarchand Mangaldas** (SAM), **J Sagar Associates** (JSA), **Khaitan & Co**, **L&L Partners** (formerly Luthra & Luthra) and **Trilegal**.

But as the charts below demonstrate, they are involved in a majority of India's largest corporate transactional mandates, across the mega deals ($1bn+), huge ($200m+) and large ($50m) segments of deal sizes.

The Marquee Corporate Firms' domination also extends beyond the top bracket of work: the seven have snapped up a major market share in the Mid-Cap Deals segment of up-to-$50m (and in a huge number of deals without disclosed deal values, also including major international deals where an India component could not be separately valued, though that could also be chalked up to more effective submissions than the other firms).

While we are not explicitly ranking firms within each market segment, one of the seven Marquee Corporate Firms would be an easy pick for a possible winner: **AZB** was ahead of the others by a very short country mile in the previous financial year on all significant metrics (see profile below).

Purely by its corporate deals practice profile over the last year, **SAM** was arguably ahead of the four nearest competitors by a whisker, in terms of its absolute corporate deal value, its heavy push in the insolvency space, its exposure to the largest deals and its very strong pipeline in the Mid-Cap segment (see below).

On the numbers alone, there is very little to tell apart **CAM**, **L&L** and **JSA**. CAM had slightly higher top-tier deal volumes than L&L and JSA but the latter two made that up with greater Mid-Cap activity; CAM and L&L, meanwhile, had greater exposure in the top-tier insolvency space than JSA.

Khaitan & Co had lagged slightly behind the others in absolute deal counts, though it's not by a huge margin.

However, **Trilegal**, while undoubtedly having the size, headcounts and reputation to be widely perceived as a Marquee Corporate Firm, has comparatively under-performed in the last fiscal year, according to reported deal counts and values, and just barely managed to scrape into the Marquee Corporate Firms tier.

THE CORPORATE CORE

The Marquee Firms' corporate departments form the core around which other practices are built, and for the first time, our data allows us to estimate the real-world corporate bench strength of each of these.

By tallying the number of distinct individual partners who have led on firms' transactions ("**Lead Partners**") over the last year, we have arrived at a near-objective figure of transactional corporate leadership bandwidth that a firm can offer, as well as a rough estimate of how central the Marquee Firms' corporate practice is to their business.

> This categorisation is a conservative one, and will not be a surprise to most observers, based purely on fee-earner headcounts and national presence alone, though a few firms would be possible contenders on those factors. E.g.: Dua Associates has 67 partners but is fairly media -shy and has not submitted a deal release to any publication, directory or league table, as far as we can tell. Economic Laws Practice's (ELP) total partnership of 55, including three different tiers of partners, would be enough to qualify it into the Marquee group by size, but its corporate practice is not quite at the level of the others and tax still rules the roost internally.

The hard core of each of the Marquee Firms' senior lead corporate partners, makes up between 16% to 33% of the total partnership size.

The 33% figure for **AZB** confirms how heavily M&A and corporate transactions are embedded in the firm's DNA. Slicing the information a different way, by adding up the total number of separate partners across practice areas who have been credited in deals, at least 70 of the AZB's 105 partners (67%) have been pulled into at least one corporate deal of the firm (do

note that these stats depend on how many partners a firm credits in its press releases, which varies).

JSA has a similarly high ratio of its 28 core corporate partners to the rest of its partnership, at 32%, with a total of at least 59 partners (68% of totals) having acted on one corporate deal or another.

In what could be a coincidence but could also be a sign of both firms' common ancestry and long-honed similar strategies about how to conquer the Indian legal market, **CAM** and **SAM** lie precisely in the middle, together, respectively with 22% and 21% ratios of core senior corporate partners to their overall partnership (CAM has 29 total core corporate to SAM's 24).

At CAM, 73 partners across practice areas have been involved in corporate deals (around 55% of the total partnership). At SAM that figure was 63 partners, or 54%.

At **L&L** there are 20 lead corporate partners, making up 27% of its total partnership, with 34 total partners credited on deals (47% of the total partnership).

Trilegal has reported 10 lead partners out of a total partnership of 50 (20%), with corporate transactions having employed at least 15 partners at the firm (or 30%). Part of that lower figure may have to do with not reporting full teams that appear as well as its smaller all-equity partnership than the others, which relies heavily on its sizeable counsel and more senior associate ranks to do the heavy lifting on deals (when including lawyers with the counsel designation in the total count of partners involved, Trilegal's tally increases to 21). Nevertheless, purely by the data, this suggests that Trilegal's corporate practice is not as core to the firm as at others.

Khaitan & Co is another interesting outlier.

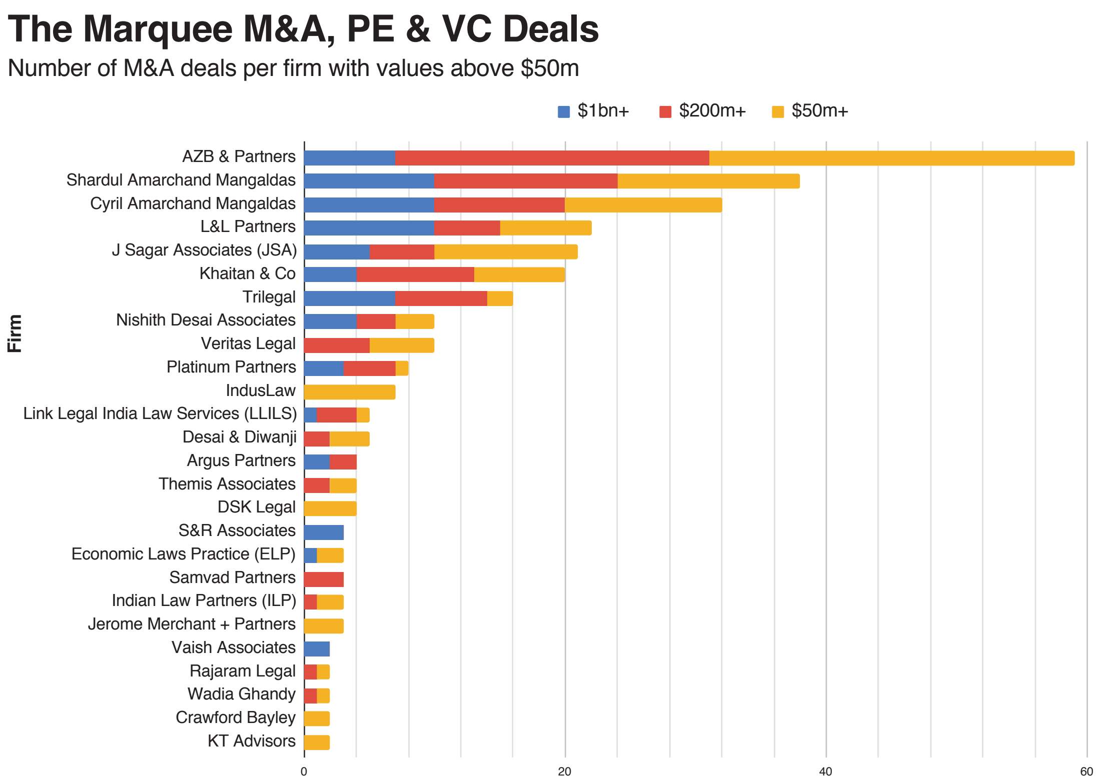


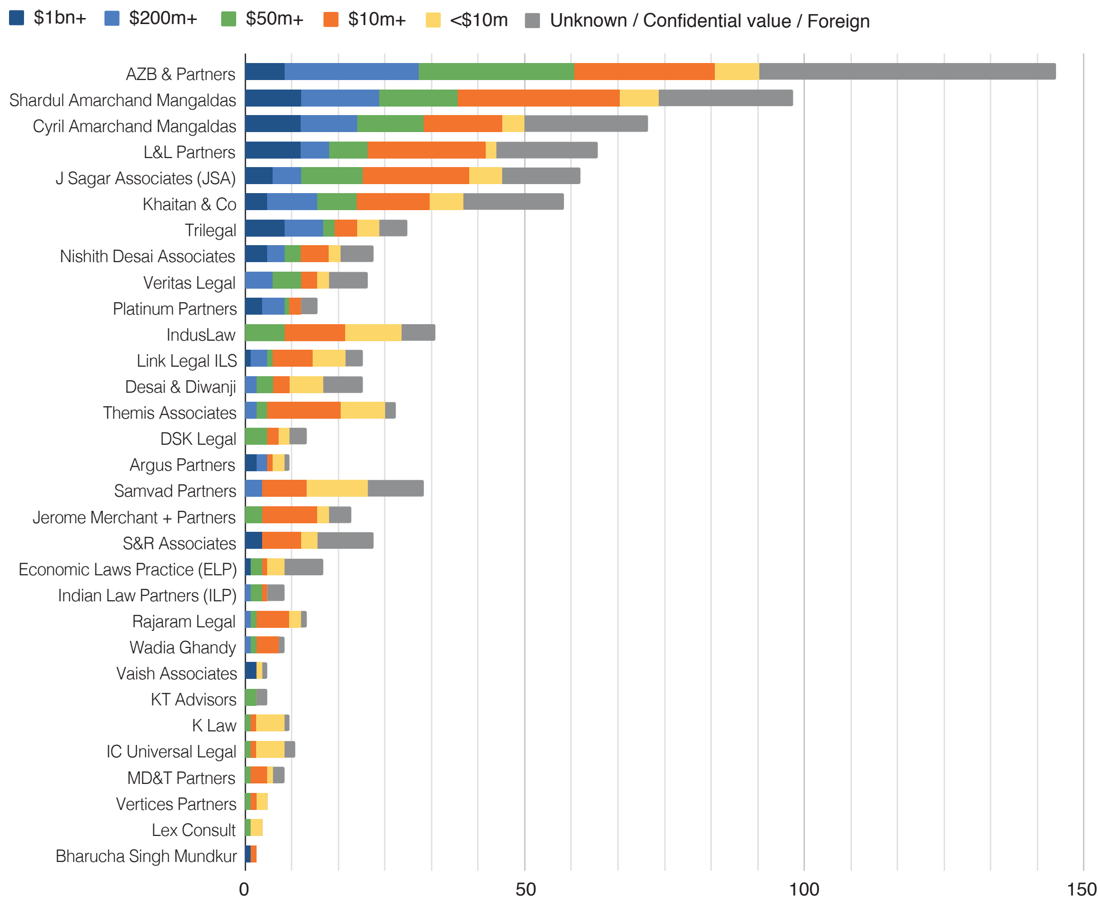
Chart of Big Deals: These are the largest of the large deals, of at least $50m. These deals are the ones every top law firms needs to have in their kitty to play amongst in the big league. They are also key to our definition of the Marquee Corporate Firms, which have all acted on a greater number of these than the Prestige Firms or the Leading Mid-Cap Firms.

While 25 distinct partners have led one corporate transaction or another at the firm, they make up only 16% of its total partnership of 152 (though a total of 49 partners have been credited for deals at the firm). Khaitan's website lists its corporate and commercial partnership at 68, far ahead of the next-biggest areas of disputes (35 partners) and capital markets (16 partners). Having the largest partnership in India, coupled with a low partner to associate leverage ratio of only 2.8, suggests that corporate teams at Khaitan are fairly centralised around the more senior partners who bring clients to the table for the more junior salaried partners.

Notwithstanding the above differences, the seven Marquee Corporate Firms profiled on the following pages are all the top of the corporate

Number of M&A, PE and VC transactions per firm, by deal value category

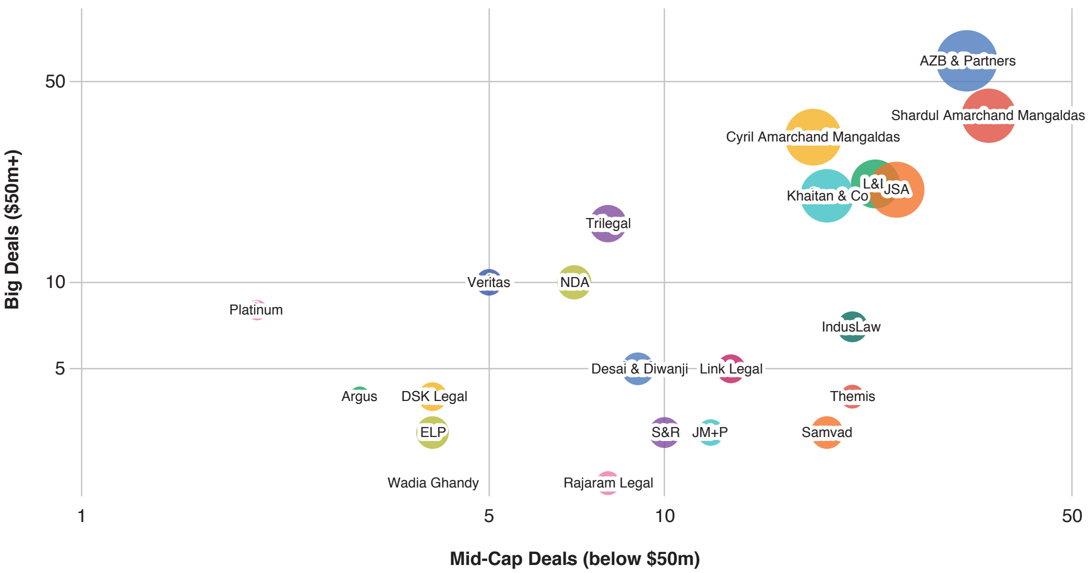
Firms with fewer than two recorded deals excluded



This chart gives a one-stop overview of all deal activity captured across the board, excluding firms with fewer than two recorded deals. The firms are sorted by those with the most Big Deals (above $50m), followed by those with the greatest counts of Mid-Cap Deals (below $50m). Deals that were primarily foreign or those where deal values were confidential are excluded from the ranking, though they are reflected in the grey bar in the chart). The exclusion of a firm does not necessarily mean it did not complete any deals in the relevant time period or segment: it may simply not have submitted any or a sufficient number of deals to us.

Big Deals (vertical axis) vs Mid-Cap Deals (horizontal axis)

Bubble size denotes total partners who led on deals. Firms with fewer than two deals with disclosed values above $50m are excluded from chart



This chart visually illustrates the different practice profiles of the top law firms that have acted on at least two Big Deals of $50m (the scale on both axes is logarithmic). The size of the bubble for each firm reflects the number of distinct corporate partners who led on at least one deal.

The top-right quadrant clearly identifies the Marquee Corporate Firms, which have a high number of both Big Deals and Mid-Cap Deals. Trilegal towards the bottom of the quadrant demarcates the line between the Marquee Firms and some of the more mid-size or smaller Prestige Corporate Firms.The Prestige Firms can generally be found from across the vertical middle band of the chart.

game, and share the distinction amongst the corporate full service firms of being the biggest and amongst the most-preferred by top clients. In short, they have more in common with each other than what divides them.

To reiterate, our categorisation of Marquee Corporate Firms is not intended to be a static one, but to be fluid and open to other firms that differentiate themselves from the rest of the market in coming years by virtue of their objective size and deal flows.

AZB & Partners						
Offices						
Mumbai, Delhi, Bangalore, Pune, Gurgaon						
Total Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
106	39	430	3.1	36	31	18

(headcounts dated 01 April 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
147	41,439	7	24	28	26	8	54	16

AZB has cemented its reputation as the undisputed corporate transactional powerhouse on pretty much all metrics. With a powerful Mumbai-Delhi axis, a roster of senior and up-and-coming partners with practices that could count as top tier mid-size law firms in their own right (see LI Corporate Dealmakers of the Year, above), and a huge pipeline of Mid-Cap work, it is the corporate firm that will be hard to beat in its current incarnation.

Notably, 16 of its partners leading on deals make it to the top 100 of our Corporate Dealmakers of the Year list (with Mumbai partner Ashwath Rau topping the list by a comfortable margin, and Delhi's Gautam Saha and Bangalore's Srinath Dasari both making the top 10). And those numbers don't even include Zia Mody, who remains a bit of a legend in the corporate M&A space (though clearly more so behind the scenes than in the past, at 88th place amongst our Dealmakers).

In short, the breadth of AZB's senior corporate bench has to be one of the biggest testaments to its ability to walk the talk when delivering on top corporate transactions.

At least 31 of the firms' deals involved purchases or investments of more than $200m, while another 28 deals had values of between $50m and $200m.

AZB is also hugely active in the smaller- and mid-market segment of corporate deals, with 33 deals below the $50m mark. Coupled with 53 reported deals without disclosed values or without a quantifiable India element, its total deal count is nearly 50% ahead of SAM's.

Shardul Amarchand Mangaldas

Offices
Delhi, Mumbai, Gurgaon, Bangalore, Ahmedabad, Kolkata, Chennai

Total Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
117	43	552	3.7	24	22	10

(headcounts dated 07 May 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
98	53,597	10	14	14	29	7	24	

Traditionally Delhi-headquartered Shardul Amarchand Mangaldas has managed to do what some thought was impossible, by building a strong Mumbai office from scratch, under corporate partners Akshay Chudasama (formerly at JSA) and Raghubir Menon (a nearly-homegrown Amarchand partner, and ranked second in our list of Corporate Dealmakers). In short, SAM is now very much a fixture in the highly-competitive Mumbai market, where its partners are now generating a solid chunk of the firm's corporate transaction revenue.

Delhi too has built upon its legacy corporate strength by integrating lateral partners such as Amit Khansaheb (ranked 6th in our Dealmakers table). Nine SAM partners are part of our top 100 Dealmakers list.

That said, top Delhi corporate partner Akila Agrawal (ranked 43rd in the top 100) has joined arch-rival CAM in August 2018; and seventh-ranked Siddharth Nair, in Bangalore, is set to leave the firm in the coming months, which, if the whispers in the market are to be believed, has set off a hunt for a local replacement.

SAM has also stolen a tiny bit of a march on its rivals in the insolvency space, under the leadership of executive chairman Shardul Shroff, with seven mostly big-ticket mandates. Coupled with its top-tier competition practice, it's a solid base for more future M&A.

If the SAM ship continues to remain steady, it's in for a good year.

Cyril Amarchand Mangaldas

Offices
Mumbai, Delhi, Bangalore, Hyderabad, Chennai, Ahmedabad

Total Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
132	46	737	4.6	28	22	10

(headcounts dated 31 May 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
72	47,202	10	10	12	14	4	22	4

Cyril Amarchand Mangaldas, under the inimitable stewardship of managing partner Cyril Shroff, has remained a corporate (and full-service) powerhouse, of course.

Besides at least 20 deals with values of more than $200m (half of which were above the $1bn mark), the firm has also kept a toe in the simmering insolvency game, particularly with mandates for committees of creditors (at least three, capitalising on the firm's strong relationships with banks) and at least one mandate for the resolution professional.

Shroff himself is the highest-ranked CAM partner in our top 100 Corporate Dealmakers, which reflects his market standing.

Other partners in the top 100 include Mumbai's Vandana Sekhri (40th), the aforementioned Akila Agrawal in Delhi (50th), Reeba Chacko in Bangalore (55th) and L Viswanathan in Mumbai (67th).

No one would question that CAM continues to have major corporate clout in the Mumbai market. And while CAM's partnership game is strong in Bangalore (the city provided nearly half of the firm's top 100 Dealmaker partners), Delhi is a different story. Besides Agrawal (whose tally also includes some work at SAM), not another Delhi partner has reported a sufficient number of deals to make it into the top 100 Dealmakers cut-off. That said, CAM's Delhi office has steadied somewhat, having faced massive departures over the last few years (after massive initial hirings). And there is probably enough work from the other two cities to keep the office busy, despite it having grown in size considerably.

But without more rainmakers in Delhi, it will become harder in the coming years for CAM to out-compete other Marquee Firms.

L&L Partners

Offices
New Delhi, Mumbai, Bengaluru, Hyderabad

Total Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
73	13	322	3.4	20	17	8

(headcounts dated 30 May 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
63	28,732	10	5	7	21	2	18	12

L&L Partners, formerly known as Luthra & Luthra, has had a killer year of M&A and funds work, with 15 deals with values above $200m, as well as 21 deals in the $10m – $50m segment. In addition, it has successfully led an early gambit to corner the high-end insolvency market (alongside SAM), making up the six largest $1bn+ M&A deals in its kitty.

With a total of 20 of its partners having led on transactions in the last year, there's a solid bench there, even if that number is smaller than the other Marquee Firms (in part due to a string of partner-level departures from its corporate practice).

The firm has eight partners in our top 100 Dealmakers of the Year list and those partners do punch above their weight. Bikash Jhawar (ranked 9th) has probably led on as many big-ticket insolvencies as any other in India, and corporate partners William Vivian John, Sundeep Dudeja and Deepak THM are all in the top 40.

The departure of 10th-ranked Amit Shetye will be a loss for the firm when he joins US fund GIP soon, though some work from there will flow L&L's way in the coming year, no doubt.

L&L has built a solid high-end corporate practice, in line with its declared strategic shift in 2013 to focus on more high-end corporate work. But with existing corporate partners presumably already working at near maximum-capacity, the only way it can grow its corporate footprint to keep up with rivals will be to add (and retain) more partners on the corporate side.

J Sagar Associates (JSA)

Offices
Ahmedabad, Bengaluru, Chennai, Gurugram, GIFT IFSC, Hyderbad, Mumbai, New Delhi

Total Partners	Associate Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
87	52	19	300	2.4	27	19	17

(headcounts dated 02 May 2018) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
60	27,997	5	5	11	19	6	14	4

J Sagar Associates (JSA) has had superbly strong year with a respectable number of high-value mandates (10 deals above $200m) and similar figures across market segments. On top of that, it probably has the widest and most balanced roster of corporate lead partners alongside AZB: 28 partners out of 87 (32% compared to AZB's 33%) had led on at least one corporate transactions in the last financial, of whom eight are in the top 100 of Corporate Dealmakers. Amongst those, Gurgaon-based partner Lalit Kumar has led on seven deals in 24th position. And inside the top 50, with five deals each, are Gurgaon's Sidharrth Shankar, Bangalore's Probir Roy Chowdhury, Gurgaon's Upendra Nath Sharma, and Bangalore-based co-managing partner Vivek K Chandy.

This split is a sign of a very well-balanced firm without any obvious single rainmakers overshadowing the others. In part this is likely a function of the collegiate and collaborative partnership atmosphere on which JSA prides itself. It's also likely a symptom of its flatter partnership structure: its partner to fee-earner leverage of 2.4 is the lowest amongst the Marquee Firms, meaning that each partner generally has a smaller team to keep busy and fed (though it's worth noting that the gearing ratio increases to more than 7 when considering the smaller equity partnership of 35).

Its equation certainly seems to be working for JSA and has proved pretty stable for the most part. Whether this system can nurture stand-out rainmakers and keep them happy, in the long term, though, is a more complicated question.

Khaitan & Co

Offices
Bangalore, Kolkata, Mumbai, Delhi

Total Partners	Associate Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
152	36	13	578	2.8	26	22	10

(headcounts dated 05 April 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
58	24,874	4	9	7	13	6	19	4

Khaitan & Co has an enviable list of Indian Blue Chips as clients, and a strong line-up of 25 corporate lead partners. However, only five feature in the top 100 of Corporate Dealmakers. Chief amongst these, ranked 28th, is Haigreve Khaitan, the *de facto* Mumbai-based managing partner of the firm, who has led on seven deals worth $4.3bn in the last financial. Mumbai partner Vineet Shingal sits in 30th place having led on 6 deals; between 69th position and 90th are Mumbai partners Akhil Bhatnagar, Niren Patel and Aakash Choubey (who has two deals, valued at $2.3bn, with client Temasek).

The prevalance of Mumbai partners is not unexpected: Mumbai was the driver which grew the firm from Rs 11 crore Kolkata-era revenues in 2002, to upwards of Rs 610 crores in 2018-19, as we had reported recently. But it's also a weakness compared to other firms which can tap the non-Mumbai market for lucrative corporate mandates more effectively.

That said, Bangalore has in recent years entered more strongly into Khaitan's corporate mix, with partner Ganesh Prasad, for instance, having led for the firm in the Flipkart mandate in its $16bn sale.

But the firm needs to work on expanding its senior corporate bandwidth.

And Khaitan & Co's reliance on Haigreve Khaitan as its main dealmaker can be both its weakness and its strength: he is well-known in the market for being happy to share, both clients and profits, but that arguably also gives a lower incentive for other corporate partners to go out and win new work.

Trilegal						
Offices						
Mumbai, New Delhi, Gurugram, Bengaluru						
Total Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
50	9	350	6	10	8	5

(headcounts dated 17 May 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
29	26,699	7	7	2	4	4	5	1

Trilegal is the youngest of the Marquee Firms and also the one with the smallest partnership headcount – not surprising, considering it runs an all-equity model – but with an overall fee-earner headcount that is larger than JSA's. Its leverage of 6:1 fee-earners per partner therefore appears to be higher than the other Marquee Firms', but that's not necessarily a fair comparison to make since it's the only Marquee Firm that doesn't have a salaried partner tier.

Trilegal is in Marquee Firm territory in terms of its size and profile, but it has lagged behind the others in pure corporate power by most metrics. It has 10 separate partners who have led on corporate deals, but only five of its partners made it to the top 100 of our Corporate Dealmakers of the Year list:

- pureplay corporate partner Charandeep Kaur in 61st place led on four deals for companies;
- corporate partner Yogesh Singh in 62nd place, led for exiting investor Naspers on the huge Flipkart and a Byju deals.
- competition partner Nisha Kaur Uberoi in 64th led on three deals, winning the competition piece on $1bn+ mega-mergers that other firms advised on (a significant number of competition mandates had followed her to Trilegal from AZB, including the $2.1bn Schneider sale to L&T, a $1.2bn Ultratech Cement buy, and the $1.2bn GMR Airports deal);
- Harsh Pais and Sridhar Gorthi each led on two disclosed mandates, ranked 89th and 95th respectively.

Trilegal has racked up 16 deals worth more than $50m, of which seven each are above $200m and $1bn respectively.

That said, without its pureplay competition mandates, Trilegal's $1bn+ corporate deals tally would have been lower by three, and the Naspers exit from Flipkart made up more than 50% of its total deal values of $27bn.

Despite 29 total deal mandates having been counted, it is possible that its partners are under-reporting their deals or have just been unlucky with some of its bigger mandates having remained confidential last year. An alternative conclusion is that Trilegal's corporate practice is simply not as strong as the other Marquee Firms'. The 2019-20 financial year will be an interesting one to watch.

Prestige Corporate Firms: Smaller But High-Powered

Picking out the top firms in any market is usually fairly easy; it's the second layer that is far more tricky to pin down, especially when going purely by hard, objective numbers.

Right behind the Marquee Corporate Firms, a number of mid-size and smaller players have positioned themselves to target fewer but more valuable transactions.

Taking all firms outside of the Marquee that have worked on at least two such deals, yields shortlist of firms that are able to play ball in the Marquee tier and effectively.

These Prestige Corporate Firms usually don't have the headcounts – both in partnership and total fee-earners – to compete with the Marquee Firms on volume but several manage to get close.

The Big Deals chart above, based on the number of deals above $50m, features four firms that are nipping at the heels of the Marquee Firms for the top mandates. Each of these firms had 10 or more mandates in the top bracket:

- Nishith Desai Associates (NDA),
- Veritas Legal,
- Platinum Partners, and
- IndusLaw (at the smaller end of the Big Deals segment of $50m to $200m).

In addition, 14 other smaller and mid-size law firms also took home a piece of the Big Deals pie. The following had smaller deal volumes but enough Big Deals to regularly find themselves opposite the Marquee Firms.

- Link Legal India Law Services (LLILS),
- Desai & Diwanji,
- Argus Partners,
- Themis Associates, and
- S&R Associates.

The following firms also scored large mandates but a smaller number with reported Big Deal values:

- DSK Legal,
- Economic Laws Practice (ELP),
- Samvad Partners,
- Indian Law Partners (ILP),
- Jerome Merchant + Partners,
- Vaish Associates,
- Rajaram Legal,
- Wadia Ghandy,
- Crawford Bayley, and
- KT Advisors

Nishith Desai Associates
Offices
Mumbai, Bangalore, Silicon Valley, Singapore, Munich, Mumbai-BKC, New Delhi and New York.

Total Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
36	10	81	1.3	8	5	7

(headcounts dated 13 April 2018) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
23	18,937	4	3	3	5	2	6	2

NDA's position – with 10 Big Deal mandates on its plate – is easily explained by its top-tier funds and fund formation practice, which means it was found on a wide cross-section of big ticket investor exits. Funds clients such as Providence, GIC, Madison Capital, Naspers and many others, ensured a steady top-tier deal participation for the firm. With 36 partners (or leaders, as the firm calls them) and only 81 fee-earners, NDA operates at one of the lowest partner to fee-earner leverage ratios in the market, of only 1.3. Only several much smaller boutiques even come close to that figure. With that kind of gearing, it makes sense for NDA to chase the high-value work.

Two of NDA's leaders are in the list of top 100 Dealmakers of the Year: Vaibhav Parikh (42nd place with four leading mandates) and Nishchal Joshipura (66th, with three deals).

Veritas Legal

Offices
Mumbai

Total Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
7	45	5.4	4	4	3

(headcounts dated 21 May 2019) l

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
22	2,819		5	5	3	2	7	

Veritas Legal does best what founding partner Abhijit Joshi has always done when he had been at AZB: corporate and M&A. It has been expanding its disputes offering but out of its seven partners, four have led on corporate transactions, including 10 deals with values above $50m. Alongside fellow top 20 Dealmaker Nandish Vyas, Joshi has built a powerful corporate boutique firm and with strong roster of corporate clients, including Aditya Birla, Hotel Leelaventure, True North, Mayfield, Kedaara Capital and TPG, this looks unlikely to slow down in the coming year.

Platinum Partners					
Offices					
Mumbai, Delhi, Bangalore					
Total Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
9	45	4	2	2	1

(headcounts dated 02 April 2018) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
13	7,955	3	4	1	2		3	2

Platinum was involved in three reported deals with values above $1bn, four more deals in the $200m+ bracket, and one deal of $50m+. It is another lean firm of only nine partners, with a low leverage ratio of 4.

Platinum's Ankit Majmudar was the primary powerhouse in Mumbai responsible for 10 of the firm's 13 recorded transactions, of which he led on nine (partner names were not disclosed on three of the firm's deals).

A good chunk of its mandates are international, while its domestic clients include Kedaara Capital, Edelweiss, Intelenet (which was bought for $1bn by a French operator) and Star Health.

IndusLaw

Offices
Bengaluru, Delhi, Hyderabad and Mumbai

Total Partners	Associate Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
36	20	12	156	3.3	6	3	5

(headcounts dated 14 May 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
34	1,001			7	11	10	6	

Founded in 2000 but turned into a national firm in 2007, for a while, IndusLaw showed potential in quickly becoming the next Trilegal: similarly formed as a non-family outfit of like-minded young lawyers. Indus hasn't quite managed the transition into the very top tier of work but the firm has been winning its share, primarily in the Mid-Cap segment, as well as seven deals worth $50m to $200m.

Besides VC and funds work, IndusLaw boasts a strong roster of well-known start-up clients (such as techy fitness platforms CureFit and Cult Fit, Toppr and delivery darling Dunzo) and many established companies, as well as start-ups that the firm had nurtured since its early days that have now grown up, such as Wipro, Quikr and Cleartrip.

Partner Gaurav Dani was one of our top 100 Dealmakers with three deals.

With a partnership size of 34, if Indus keeps up its steady growth and momentum in the corporate space and it can hold on to its younger clients transitioning into top-tier M&A work, there is a real possibility for it to join the Marquee Firms.

Link Legal India Law Services (LLILS)

Offices
New Delhi, Mumbai, Bangalore, Gurgugram, Hyderabad and Chennai

Total Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
30	4	180	5	5	4	3

(headcounts dated 30 May 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
21	2,457	1	3	1	7	6	3	

Link Legal India Law Services (LLILS) has historically had a strong infrastructure focus, but spearheaded by corporate partner Manish Gupta and four others, the firm has also broken into the corporate space successfully, with a tally of five deals of over $50m. The firm's marquee deal was its instruction by GMR Airports in the $1.16bn investment by a consortium. Ramky Enviro Engineers went on a $530m M&A, while its client Den Networks was bought by Reliance Jio for $311m.

Link Legal also has strong links to China, assisting Apple-rival Xiaomi on its India investment (and also advising the target, Sharechat, when Shnuwei and Xiaomi invested $100m).

Link Legal's Mumbai merger in 2017 with DH Law has perhaps not provided the footprint and expansion it expected, but Link Legal has had a strong year, which shows no signs of abating.

Desai & Diwanji			
Total Partners	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
25	7	4	5

(headcounts dated 10 June 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
21	952		2	3	3	6	7	

Desai & Diwanji has always been a strong Mid-Cap corporate M&A firm with particularly close connections to Mumbai industry and businesses. Although D&D had lost a few core partners over the past years, it has replenished its dealmakers from within its ranks and now boasts four lead corporate partners who advised on five deals above $50m. Of those Siddharth Mody has racked up a deal count of 9, putting him in 16th place in our Dealmakers; partner Aneesh Gupte led on four in 60th place; Shreevardhan Sinha on three. The largest of these was for GIC on its joint $350m investment in Mankind Pharma, followed by Tirumala Milk's $238m buy of Prabhat Dairy in a slump sale. Its corporate clients also include Archean Chemical Industries, Future Retail, and a good cross-section of investment funds.

At around 25 partners (an estimate, since the firm declined to confirm figures), Desai & Diwanji has the potential to play an increasingly larger role in the M&A game, if it has the ambition to do so.

Argus Partners

Total Partners	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
18	2	2	1

(headcounts dated 22 February 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
8	20,069	2	2		1	2	1	

Argus Partners is a firm whose managing partner, Krishnava Dutt, definitely has ambitions of growth, which he had harboured ever since spinning out of what-was-then Amarchand Mangaldas Kolkata.

Argus has had a record year in terms of large deals and has also aggressively assimilated four lateral partners at the start of this year alone.

Argus stands at 19 total partners now, with Dutt and 2016-lateral partner Siddharth Raja from Samvad leading on half of the firm's eight recorded corporate deals each. Dutt in particular, has made a strong play for the insolvency space, most notably getting the nod from Tata Steel to help it buy the distressed Usha Martin steel assets for $633m, and acting on the $420m Monnet Ispat insolvency. In addition, he led for Gruh Finance on its $3bn sale to Bandhan Bank. Raja primarily advises funds and his relationship with TR Capital resulted in Argus also getting briefed in the Flipkart takeover.

This fast-growing firm will be one to watch in the coming years if it can maintain the momentum.

Themis Associates

Offices
Bangalore, Mumbai

Total Partners	Associate Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
5	5	2	36	6.2	3	2	3

(headcounts dated 09 January 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
27	967		2	2	13	8	2	

Bangalore-based Themis has quietly taken over a huge chunk of Mid-Cap venture capital work, which has occasionally also translated into larger M&A. While it had pretty much started out as an in-house extension of Sequoia Capital – which is still its most consistent client, having used Themis for all but one of the fund's 16 reported deals (one went to AZB), the firm has grown far beyond that.

Its total deal tally of 27 includes, besides Sequoia, Berkshire Hathaway (which invested $300m in Paytm), Unilever Ventures, Bennett Coleman's investment arm and Kalaari Capital, and it has also assisting a number of start-ups.

Partner Siddharth Manchanda handled 15 deals for the firm, while partner Amritha Salian led on four.

VC work doesn't always pay, but when you do enough of it, it can certainly begin to reap rewards.

DSK Legal							
Total Partners	Associate Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
33	14	5	130	2.9	5	5	3

(headcounts dated 02 May 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
11	430			4	2	2	3	

DSK Legal finds itself in an interesting position. It has had a strong year of 11 reported deals, of which four were larger than $50m. The trouble is that five of those deals were led by co-founding partner Satish Kishanchandani and partner Pritha Jha, both of whom have left with their teams to start up Pioneer Legal in May of this year. However, the firm's largest deal, for JM Financial, which received $122m from Moraine, was led by Mumbai partner Ajay Shaw. Other lead corporate partners remaining at DSK include Mayank Mehta and Niraj Kumar.

DSK too has become a firm with major ambitions though under managing partner Anand Desai: in April, it poached a team of eight partners from HSA Legal, including Mumbai corporate partners Aparajit Bhattacharya and Aninda Pal, Bangalore corporate partner Sharath Chandrasekhar and Delhi corporate partner Devika Chadha.

And though neither of those partners featured in the top 100 list of Corporate Dealmakers, if their clients follow them to DSK and enough new work flows in, DSK could see the size of its corporate practice increase in 2019-20 (though HSA will do what it can do stem that flow).

S&R Associates						
Offices						
Mumbai, Delhi						
Total Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
13	6	80	5.2	6	6	4

(headcounts dated 04 June 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
23	22,880	3			7	3	10	1

S&R Associates, while having its roots in capital markets, has managed to carve out a strong M&A offering too in a sensible hedge against a slowing public market: the firm was involved in three mega deals of more than $1bn. Its top clients are Vodafone (which merged its part-owned Indus Towers into Bharti Airtel for $14.6bn) and ArcelorMittal (which bought troubled Essar Steel with Nippon Steel for $7bn). Other corporates include HT Media, Penguin Random House and IndusInd Bank. Any Marquee Firm partner would be happy to add these names to their corporate roster.

Six partners from S&R have led on corporate mandates out of a total partnership size of only 13, with partner Rachael Israel having led on seven of the firm's 23 deals, putting her 27th in our Top 100 Corporate Dealmakers. Partners Rajath Sethi and Viral Mehta each led on another four deals, while Sanjeev Adlakha advised on three.

Bertelsmann India Investments has been one of the firm's busiest clients, having instructed S&R on six mandates in 2018-19.

Philosophically, S&R only rarely believes in lateral partner hires (and only rarely loses partners, although in April 2019, Uday Walia had joined Platinum). Slow and steady growth is therefore a good forecast for the firm and it will likely keep picking up high-value mandates where it can (unless it gets distracted by a boom in the capital markets).

Economic Laws Practice (ELP)							
Offices							
Mumbai, New, Delhi, Ahmedabad, Pune, Bengaluru, Chennai							
Total Partners	Associate Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
55	18	8	212	2.9	6	3	5

(headcounts dated 06 June 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
14	2,299	1		2	1	3	7	1

Economic Laws Practice (ELP) core strength has historically been tax but providing tax advice to corporates can be a great inroad to bagging transactional mandates, if your bench can handle it. ELP's corporate practice has seven partners who had led on disclosed corporate deals in the last financial year. The largest amongst these by far was its instruction for Larsen & Toubro in the $2.1bn acquisition by Schneider.

The firm also handled two $50m+ deals for Samara Capital and Seven Islands shipping, both on investments. Mayfield is another regular funds client of the firm with three instructions. Darshan Upadhyay is the firm's busiest partner with three lead mandates (coming 55th in our Dealmakers ranking), while Shyam Pandya worked on three and managing partner Suhail Nathani led on two (including the giant L&T deal).

ELP is another of the younger generation of firms that has 11 equity partners but without a family running the show, and at least on the corporate side it seems to have weathered the departure of several of its senior partners for counsel practice, including former managing partner Rohan Shah in 2016.

Samvad Partners

Offices
Mumbai, Delhi, Bangalore, Chennai, Hyderabad

Total Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
14	9	75	4.4	7	5	6

(headcounts dated 10 May 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
32	1,066		3		8	11	10	

Samvad is unusual for several reasons. First, at least half of Samvad's partnership of 14 is involved in corporate work. Second, it has four partners in our Top 100 Corporate Dealmakers. Third, and sadly most notably in a Top 100 that consists primarily of men, all four are women (64% of Samvad's partnership is female, a higher ratio than any other larger corporate firm in India).

Bangalore-based partners Neela Badami and Ashwini Vittalachar had led on nine and eight deals respectively in the last financial year, making it to 15th and 19th in our list of Dealmakers, in addition to Nivedita Nivargi (five lead deals), and Vineetha MG (four).

The firm has a heavy focus on VC and early-stage corporate work, allowing (and requiring) a high volume of 32 reported deals in 2018-19. That does not translate to low value mandates though. The firm counts flavour-of-the-year start-ups Delhivery, Zomato, Foodpanda and Policybazaar amongst its clients. Delhivery got a funding round of $413m in March 2019, Zomato tapped investors three times, and the latter two, twice.

On the funder side, the firm works with Omidyar Network, ICICI, Fundamentum and others. And nine of its 32 deals were M&A deals.

The question for Samvad will be whether it can hold on to its Unicorns and other start-ups, which will be heavily courted by the Marquee Firms and other Elite Firms.

Indian Law Partners (ILP)						
Offices						
New Delhi, Mumbai						
Total Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
3	2	25	7.3	1	1	1

(headcounts dated 28 January 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
7	425		1	2	1		3	

Indian Law Partners (ILP), headed by managing partner Gopika Pant, is one of the few remaining (official) Indian best-friends of an international firm. ILP was set up as Ashurst's local ally in 2011, by former DSK partner Pant and co-founder Piyoosh Gupta (who has since gone independent).

ILP has three partners now, with Pant having led on all of the firm's seven reported deals. Clients include Hyundai (which invested $300m into an Ola subsidiary and another electric car company), as well as Avaada Power and other corporates.

Far from being just Ashurst's local operation, ILP has a strong roster of independent work, with Ashurst only being recorded as having acted on one of those deals (though foreign law firm involvement is often under-reported).

Jerome Merchant + Partners

Offices
Mumbai

Total Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
5	1	20	3	4	2	4

(headcounts dated 04 June 2018) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
19	455			3	10	2	4	2

Jerome Merchant + Partners was co-founded by former AZB partner Vishnu Jerome in 2012. But, despite the departure of two co-founders, the firm has sustained itself. It was joined by ex-AZB partner Kalpana Merchant in 2015, giving it a new name and has now grown to five partners. While specialising first and foremost in finance, JM+P has built up a very respectable M&A, PE and VC practice with a total of at least 19 recorded deals. Three of those deals had values above $50m, with four of the firm's five partners having led on at least one deal. Jerome tallied up nine and partner Sameer Sibal led on seven, both hitting the top 26 in our list of Dealmakers.

The firm's top clients were Centrum Financial Services (which bought a $114m supply-chain business from L&T), and investment fund VH Capital, which instructed the firm on three deals (including in relation to the $100m Sharechat and a $50m round in Meesho). Other clients include tech start-ups Tapzo and SMECorner (which raised two rounds), Evolvence India fund and IIFL.

JM+P doesn't appear to have ambitions to grow rapidly, but its corporate client base, for one, has grown massively in the last year.

Vaish Associates

Offices
Mumbai, Delhi, Bangalore

Total Partners	Associate Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
12	10	2	92	6.7	1	1	

(headcounts dated 12 April 2018) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
4	2,366	2				1	1	

Vaish Associates, especially well-known for its tax practice, also has a strong corporate practice, anchored by partner Bomi Daruwala. Though it has not actively reported many deals, it cropped up on some of the biggest ticket mandates, including acting for the Tata Group on its $1.2bn buy into GMR Airports, as well as Century Textiles and Industries, which sold its cement business to Ultratech for $1.2bn.

Vaish Associates has not showcased any major ambitions for growth but it remains a firm with a strong and very influential top-tier corporate book.

Rajaram Legal

Total Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
3	8	1.7	3	1	3

(headcounts dated 28 December 2018) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
11	534		1	1	6	2	1	

Rajaram Legal has an interesting story. It was started only in 2016, by former Unilazer Ventures general counsel (GC) Archana Rajaram aiming to act as an extension of VC's in-house department. Events overtook Rajaram, however, and she pivoted to a law firm boutique model in 2017 and has grown to three partners, each having led on their own deals.

The firm advised on 11 deals, of which nine were in the PE/VC space. Matrix Partners is Rajaram's most regular VC client with five deals, but the firm also counts several fashionable start-ups as clients: Ridlr, which was bought by Ola for $25m, and meat delivery start-up Licious had seen two funding rounds of $25m each.

Wadia Ghandy			
Total Partners	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
31			

(headcounts dated 10 June 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
7	461		1	1	4		1	

Wadia Ghandy & Co was once the great shining example of a Bombay solicitors firm that had managed to move with the times and could worry the larger firms. It has not entirely lived up to that promise, instead having often served as a training ground for the bigger firms to poach from. Nevertheless, WG still retains strong corporate deals activity, despite not having actively submitted any deals to our league tables (perhaps in line with its traditional solicitor-firm roots). Clients include at least one Tata subsidiary, tech personal finance start-up Walnut and an instruction for the target in Adani's $275m purchase of Marine Infrastructure port, as well as the $100m Symbiotec Pharma deal.

Crawford Bayley

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
2	311			2				

Mumbai solicitors firm **Crawford Bayley**'s glory days may be behind it, but it can still pull in big mandates. The firm acted for Aurangabad Electricals on its $126m sale to Mahindra CIE, as well as for Centrum Group on its $185m by Ebix. Partner Sanjay Asher – previously IPO factory extra-ordinaire – led on both these deals, having clearly turned his hands to M&A while the capital markets were sleeping. Fellow partner Sanjay Buch also has a strong book of M&A work (having acted on several deals, though none qualified under our methodology).

KT Advisors (see box below) was started only in 2016 by former Shardul Amarchand Mangaldas partner Kalpataru Tripathy, and has grown to three partners and a racked up a deal count of four, including two $50m+ deals. One was a $75m fundraise for Fusion Micro Finance, the other a mandate for Singapore fund Lotus One, which invested $55m to distressed Hindusthan National Glass & Industries.

The firm remains lean, with only nine fee-earners but, in line with Tripathy's long-Amarchand heritage, its regularly on deals opposite the Marquee Firms.

KT Advisors

Offices
Delhi, Bhubaneswar

Total Partners	Associate Partners	Female Partners	Total Fee-earners	Partner to Fee-earner Leverage Ratio	All Corporate Lead Partners	M&A Lead Partners	PE/VC Lead Partners
3	1	1	9	2	1	1	1

(headcounts dated 04 June 2019) I

Deal Count	Deal Values ($m)	$1bn+ count	$200m+ count	$50m+ count	$10m+ count	<$10m count	Unknown values	Foreign deals
4	130			2			2	

Corporate Challenger Firms

Mid-Cap M&A activity, which we have defined as publicly disclosed deal values of up to $50m and is reflected in the chart on the opposite page, may not be as glamorous or as lucrative as the Big Deals, but it is essential to a law firm's balanced practice.

After all, big clients also have small deals they want you to do, small clients may turn into big clients, and sometimes, the smaller deals can also be more interesting to work on, directly involving founders in novel industries requiring novel legal solutions.

Case in point: four of the seven Marquee Firms topped the corporate Mid-Cap deals table for 2018-19, and most of the Prestige Corporate Firms occupy the top spots in the Mid-Cap table too.

Besides the firms already mentioned, we have identified 24 other firms with at least two partners that had visibility in the Mid-Cap deals segment, having had at least two deals with reported values.

This list is naturally going to be somewhat variable - some years smaller firms may have two deals in the public domain, while other years those deals might not get reported or their values might not get disclosed. But, having had at least two deals that were publicly reported with values given in the mainstream press can be a good yardstick and starting point, since it will imply that a firm has a fair amount more high-profile corporate activity.

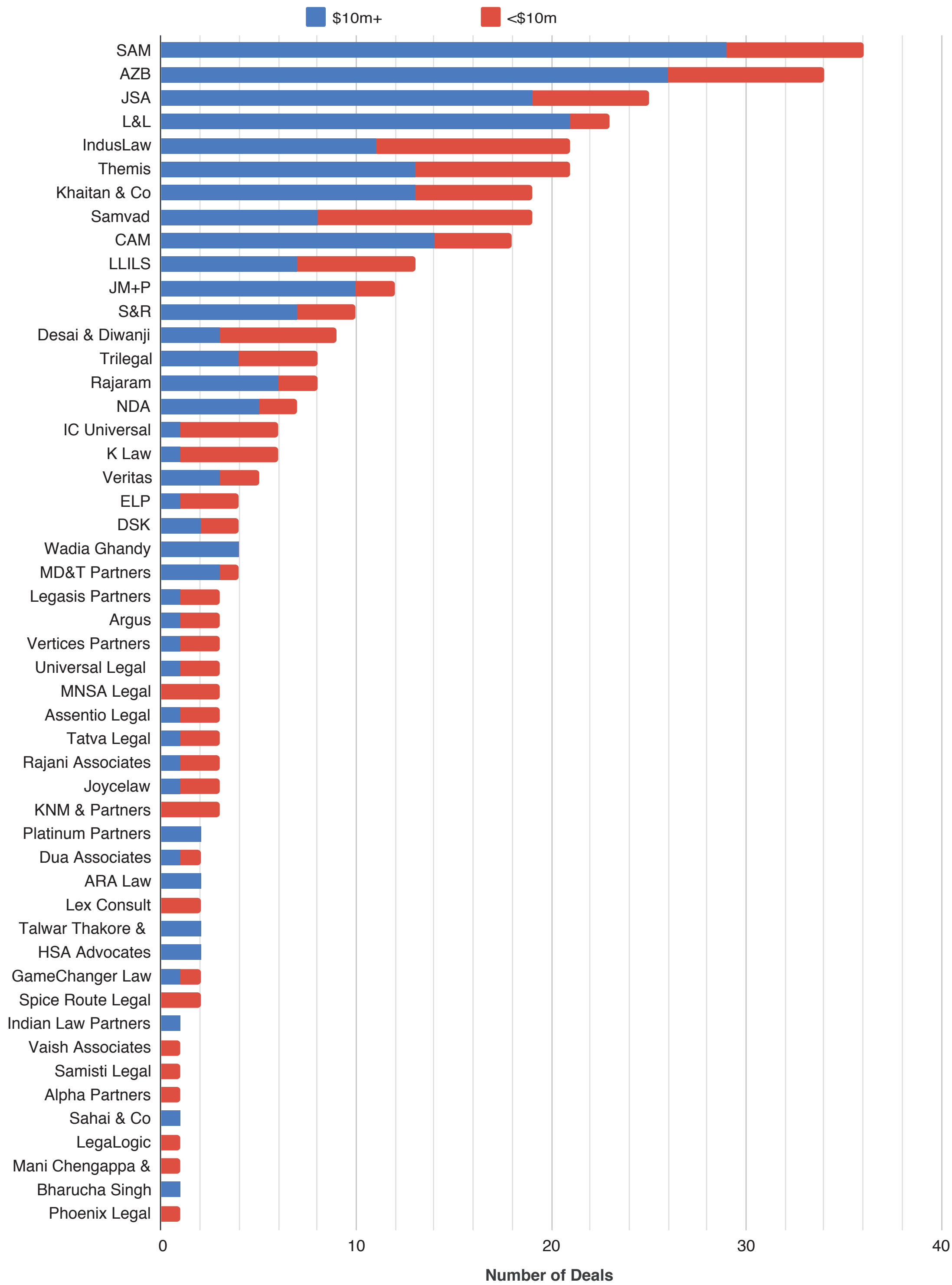
These firms will be worth watching; a few may drop off this list in coming years, while others may enter the Prestige Corporate Firms segment by next year; and some may already be there, due to under-reporting of activity (some on this list whose deal counts are likely underestimates include Dua Associates, ARA Law, K Law and Tatva Legal, for instance).

The following were the Corporate Challenger Firms in the 2018-19 financial year by Mid-Cap deal-volumes:

- IC Universal Legal,
- K Law,
- MD&T Partners,
- Legasis Partners,
- Vertices Partners,
- Universal Legal Advocates,
- MNSA Legal,
- Assentio Legal,
- Tatva Legal,
- Rajani Associates,
- KNM & Partners,
- Dua Associates,
- ARA Law,
- Lex Consult,
- Talwar Thakore & Associates,
- HSA Advocates,
- GameChanger Law Advisors,
- Spice Route Legal,
- Samisti Legal,
- Alpha Partners,
- LegaLogic Consulting,
- Mani Chengappa & Mathur (MCM),
- Bharucha Singh Mundkur,
- Phoenix Legal.

Corporate Mid-Cap Deals

Deals per firm of disclosed values up to $50m (total deals, then values act as tie-breaker)



Top of Equity Capital Markets

Equity capital markets (CM) can be a tough practice area for a law firm to manage. When the going is good and the markets are booming, it seems like there aren't enough lawyers to handle the work; when the capital markets go to sleep, utilisation and profits plummet.

On top of that, no Marquee Corporate Firm worth its salt (see previous section) can afford to ignore a capital markets practice or keeping at least a finger on the pulse: an initial public offering (IPO) and other capital markets work are fantastic opportunities for law firms to forge deep, long-lasting bonds with clients, and many of the biggest listed companies will be comforted in being able to access capital markets expertise via their top legal advisers.

M&A and investments may have had a great financial year to 31 March 2019, but equity and debt liquidity had all but dried up over the same period. Things had begun promisingly in early 2018, but after 1 April the market slowed down and by 28 September 2018, Dinesh Engineers brought the market to a crashing halt. Its IPO had hoped to raise Rs 185 crore, but was pulled due to "current volatility in the market".

The markets picked up again slightly at the beginning of the 2019 financial year, with a few companies hoping to slip into the brief window before the national elections, though overall the outlook was nearly as bad as it gets.

"The broader capital markets have been listless in the last year or so," explains L&L Partners capital markets star Manan Lahoty. "The deal-making in the primary market has been sluggish, with a far lesser number of DRHPs [draft red herring prospectus] as well as closed IPOs and QIPs [qualified institutional placements]."

"In such times, the focus is more on promoters recapitalising the companies through a rights issue, or consolidating their stakes through a buy-back," adds Lahoty.

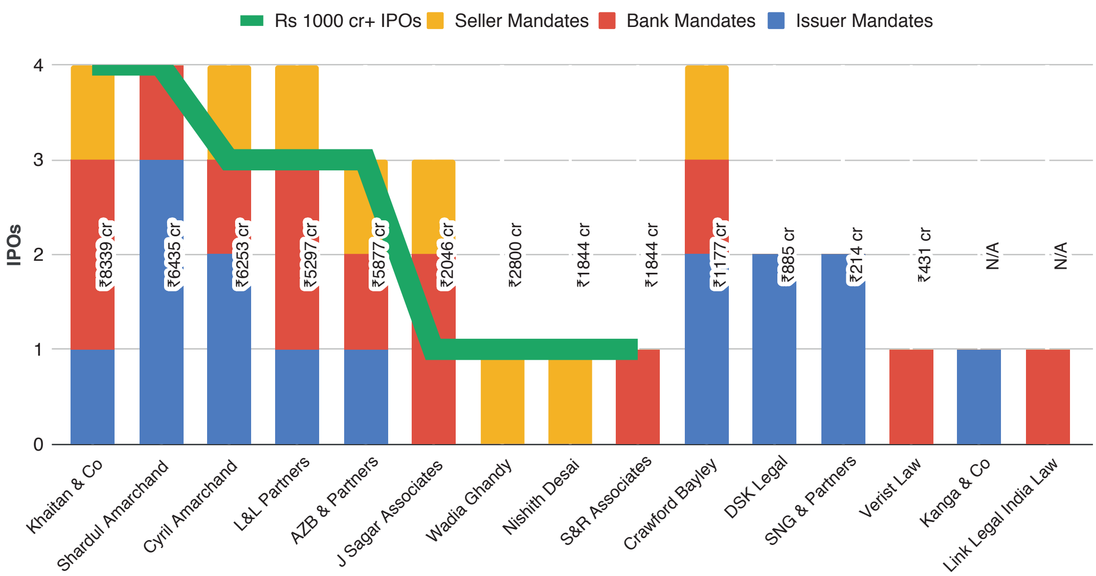
ARE THERE ALTERNATIVES?

Apart from IPOs and QIPs, there is not much else to for capital markets lawyers to really sink their teeth into.

Equity rights issues are often not the most interesting, from a hungry capital markets lawyers' perspective: some of the larger issuers don't even need to file new prospectuses and legal advice will be limited.

IPOs per domestic firm, number of Rs 1000 cr+ mandates, total IPO values

From 1 April 2018 - 31 March 2019



Debt deals too require much less work than equity, and the fees can be far lower. For a debt IPO, lawyers are usually paid around 20% of what would usually be paid for an equity IPO, according to several lawyers we spoke to, and fees for private placements of debt can be as low as 10% of equity IPO fees. Debt capital markets work often doesn't involve foreign law firms and in many cases is handled by firms' finance practices, rather than capital markets teams.

THE CAPITAL MARKETS MARQUEE FIRMS

The numbers bear this out: in the 2017 calendar year we had reported 60 DRHPs, with four law firms picking up more than 10 mandates each.

This last financial year was a different story, with only 14 red herring prospectuses (RHPs) filed with the National Stock Exchange and completed. Out of those, the top four firms barely managed to bag roles on four completed IPOs each.

We have defined the IPO top tier, doldrums notwithstanding, by the number of IPOs that raised more than Rs 1,000 crore ($144m).

Khaitan & Co (which has India's largest capital markets practice, having grown it massively until 2017), **Shardul Amarchand Mangaldas (SAM), Cyril Amarchand Mangaldas** (CAM) and **L&L Partners** all tied for the lead of the market, with four IPOs each, with total values of at least Rs 5,000 crores in each case.

Khaitan and SAM led marginally according to our metrics, with each of their four IPOs having raised more than Rs 1,000. CAM and L&L were barely behind, with three of their four IPOs having met that mark.

AZB & Partners had advised on three IPOs, of which all were Rs 1,000 cr deals. **J Sagar Associates** (JSA) scored three IPOs, with total values of Rs 2,000 cr, though only one of these was a Rs 1,000 cr+ affair. Prestige Corporate Firm **S&R Associates** can still count itself amongst the true blue Capital Market Marquee Firms, having scored one mandate advising the banks on the Indostar Capital Finance Rs 1,800 cr IPO.

The only Marquee Corporate Firm missing from the IPO list was Trilegal.

THE MID-TIER CAPITAL MARKETS SPECIALISTS (AND THREE NEWCOMERS)

Crawford Bayley seems to have redeveloped its appetite for (limited) IPOs, after it had almost disappeared from the IPO landscape in 2017 when it had handled only two mandates (12 fewer than in 2016).

Capital markets boutique **Verist Law**, headed by Srishti Ojha, acted on one Rs 431 crore IPO, while regular capital markets contender **Kanga & Co** bagged one mandate.

THREE NEWCOMERS TRY OUT IPOS

In the last financial year, it had acted on four mandates, though none were over Rs 1,000 cr in value.

THE MAIN FIRMS ON THE SEVEN BIGGEST RS 1,000 CR+ IPOS

Issuer	Date	Issue size (Rs crores)	Company mandates	Bank mandates	International counsel
HDFC Asset Management	Jul-18	2800	AZB, Mumbai	Khaitan, Mumbai	Latham & Watkins, Singapore
Varroc Engineering	Jun-18	1955	Khaitan, Mumbai	SAM, Mumbai	Clifford Chance, Singapore
Indostar Capital Finance	Jun-18	1844	L&L, Mumbai	S&R, Mumbai	Sidley Austin, Singapore
Aavas Financiers	Sep-18	1729	SAM, Mumbai	CAM, Delhi	Sidley Austin
Chalet Hotels	Jan-19	1629	SAM, Mumbai	Khaitan, Mumbai	Sidley Austin
CreditAccess Grameen	Aug-18	1126	CAM, Bangalore	L&L, Mumbai	Clifford Chance
TCNS Clothing	Jul-18	1122	SAM, Delhi	AZB, Delhi	Sidley Austin

Also encouraging was the emergence of **DSK Legal** and **SNG & Partners**, which had not featured in our IPO league table last year, and advised issuers on two mandates each.

Link Legal India Law Services was another new name in IPOs this year and advised on one IPO for the banks.

Wadia Ghandy and Nishith Desai Associates, while not having a specialist IPO practice as such, each scored one big IPO advising the seller shareholders, capitalising on their links to venture capital and private equity house-clients.

FOREIGN ECM FIRMS

The view from abroad has been similarly stagnant, though **Sidley Austin** this year again picked up the most mandates, having acted on five Indian IPOs for the lead bankers (of which four were Rs 1,000 cr+ affairs).

Clifford Chance scored three mandates for banks (of which two were in the Rs 1,000 cr+ bracket), and **Latham & Watkins** found work on two deals for banks (one had values of over Rs 1,000 cr).

Sidleys Singapore partner Manoj Bhargava comments: "The volatile markets made institutional investors very selective – while several IPOs, QIPs and rights offerings closed and were over-subscribed, a number of them were also deferred. The demand for capital continues and has increased in 2019 but we've seen completed offerings only in a limited number of sectors in the past year or so."

The smaller end of the IPO market also saw two international newcomers: **Riker Danzig**'s New York office and **Perkins Coie** in Dallas each scored two foreign law firm mandates for issuers.

Regular IPO advisers **Duane Morris & Selvam** and **Squire Patton Boggs** picked up one IPO each for banks.

OUTLOOK

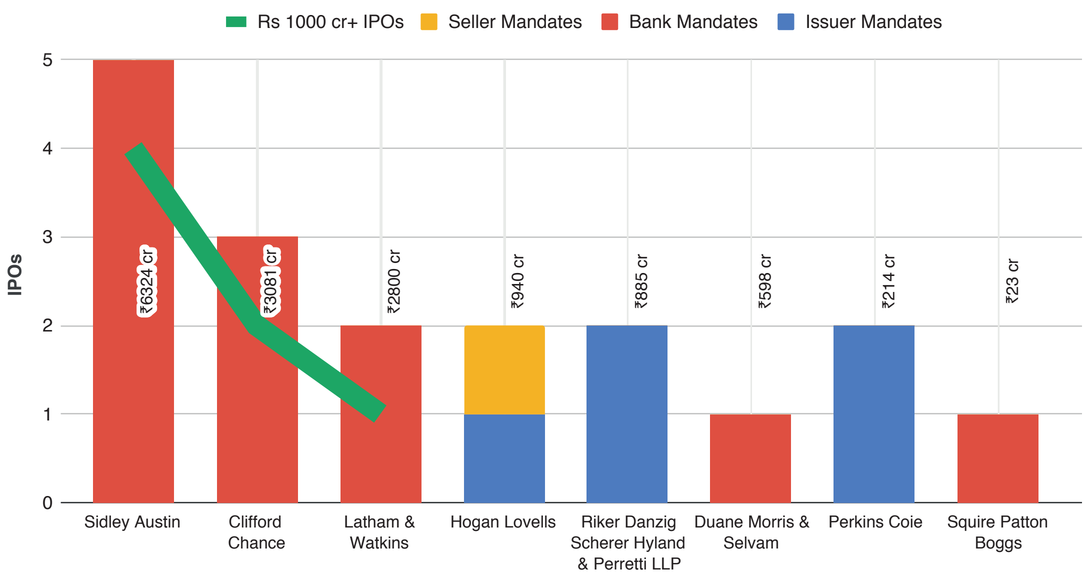
Having had a fair amount of rest seems to have recharged capital market lawyers' batteries, and most are optimistic about what this year holds.

Sidleys capital markets partner Ankit Kashyap says: "We expect that after the general elections there will be an increase in ECM activity given there is a significant backlog of deals which have already received SEBI approvals and are awaiting less choppy waters for their launch."

"We are seeing a much stronger deal flow for new listings and QIPs," adds Lahoty.

IPOs per international firm, number of Rs 1000 cr+ mandates, total IPO values

From 1 April 2018 - 31 March 2019



Foreign corporate firms in India

Foreign law firms too have had a bumper year in India, with the vast majority of public instructions linked to their relationships with their marquee private equity clients, which were very hot on India this year. We have ranked the top 13 firms that had at least two India mandates with deal values attached, signifying transactions with a significant India element.

Gunderson Dettmer and **Goodwin Procter** primarily profited from their ties to huge global funds that were bullish on India, bagging six and four India mandates respectively. Goodwin, advised Naspers and Xiaomi on their India deals, while Gunderson advised DST Global on its many India forays.

Cleary Gottlieb Steen & Hamilton was most active for funds Brookfield (on its $576m Leela Venture hotels buy) and Temasek (on the $2.1bn Schneider buy of an L&T unit), but its ties to Arysta LifeScience ensured it the seller mandate on UPL's $4.2bn acquisition.

For **Simpson Thacher & Bartlett** its three India mandates were for giant funds Blackstone and KKR on Indian mega deals.

Kirkland & Ellis bagged the Apax mandate on a $200m India investment, Blackstone's brief on a $732m stake sale in Indiabulls, and represented the target Alight, which Wipro bought for $117m.

Slaughter and May topped the values table with $18bn off the back of its strong UK corporate multinational relationships: Slaughters clients GSK and Vodafone had massive deals in India (buying HUL's Horlicks and selling telecoms towers to Bharti Airtel respectively).

Chinese firm **Han Kun Law Offices** saw huge India action off the back of its client Meituan-Dianping, which co-invested in $1bn and $210m rounds in the Swiggy food delivery service.

Latham & Watkins had two major India mandates, one of which was for a part-Indian company: it acted for Fractal Analytics, which took $200m from Apax, and its relationship with Tencent made it part of Swiggy's $1bn funding round.

Freshfields Bruckhaus Deringer was the highest ranked foreign firm on the list with two major outbound mandates for India clients, including bagging Bharti Airtel's $1.25bn Africa fundraising from private equity players and Shree Cement's UAE acquisition of Union Cement for around $375m. Partner Arun Balasubramanian in Singapore led for the former, UAE-based Pervez Akhtar for the latter.

Like Freshfields, **Baker & McKenzie** too had two mandates for Indian corporates: Hindustan Unilever briefed the firm on its $3.8bn buy of GSK India's Horlicks business, while its German and Austrian offices represented Hyderabad-based building materials company HIL, which bought Parador in Germany for $84m.

Clifford Chance was most active in India for Carlyle and other funds, including on the fund's $413m Series F investment in Delhivery.

Wong Partnership won a spot on the league table with an instruction for Asia Healthcare from Singapore in its $50m Temasek fundraise, as well as a $530m mandate for KKR, which invested in Ramky Enviro Engineers.

Last but not least, **Stephenson Harwood** Dubai partner Diwakar Agarwal acted for Indian travel giant Cleartrip on its outbound $60m buy of Saudi travel start-up Flyin, and one deal for Helix Investments, which bought into Indian cybersecurity company Network Intelligence for $4.8m.

FOREIGN FIRMS' CORPORATE INDIA MANDATES

#	Firm	Deal Values ($m)	Deal count
1	Gunderson Dettmer	1,093	6
2	Goodwin Procter	1,632	4
3	Cleary Gottlieb Steen & Hamilton	6,876	3
4	Simpson Thacher & Bartlett	2,262	3
5	Kirkland & Ellis	1,049	3
6	Slaughter and May	18,400	2
7	Han Kun Law Offices	1,210	2
8	Latham & Watkins	1,200	2
9	Freshfields Bruckhaus Deringer	1,400	2
10	Baker & McKenzie	3,884	2
11	Clifford Chance	616	2
12	WongPartnership	580	2
13	Stephenson Harwood	65	2

Women in Indian law firms: In a growing minority

To some extent it's understandable: for years, the Indian legal profession – particularly litigation – has been dominated by men, and most of the new law firms that rose in the nineties and noughties were headed by men. The (generally) male managing partners would often be busy trying to capture market share and executing the work; worrying about whether female lawyers were given the same opportunities as the men was for many an afterthought, if that.

The average percentage of women making up the partnership at 30 top Indian law firms, for which data was available, currently stands at 30%. At only 23% out of those 30 firms is that senior gender ratio above 40%; at a third of firms it's below 20%. And amongst our Top 100 Corporate Dealmakers, only around 25% are women.

Samvad Partners stands out amongst all the larger firms with a gender balance of 64% in favour of women in its partnership of 14. "It just worked out that way, it was not planned that we had more women becoming partners," explains partner Vineetha MG. "It is completely based on performance," she adds, but agrees that it does help that the firm's senior leadership has women in it. "It brings some sort of sensitivity to certain issues."

Other larger firms with more balanced gender ratios include S&R Associates (46% are women out of 13 partners) and Rajani Associates (45% out of 13). And AZB & Partners, Shardul Amarchand Mangaldas and Cyril Amarchand Mangaldas are also above the average, with between 35% and 37%, out of more than 100 partners being women.

MG says that at most firms the gender imbalance is not necessarily intentional: "It depends on policies within the firm itself, how they look at development. I don't see any firm in the market today actively trying to make some sort of discrimination. It has just resulted in that way, but it is also dependent on the environment: if you provide more opportunities, then women come out in a good way in those opportunities."

Some of the firms that have struggled the most to increase diversity at the top, have also been making strides recently to address the deeper issues. At Khaitan & Co, only 9% of its partnership are women, but in its most recent promotion round in April 2019, more than half of the 11 new partners were women.

At IndusLaw, all four of its new partners made in April 2019 were women - in probably a first in the industry - increasing its ratio to 33%. At Cyril Amarchand Mangaldas and AZB & Partners this year, respectively 42% and 40% of new partners were women.

While a charge may occasionally be whispered by male colleagues that women are getting unfairly advantaged these days by firms trying to be more diverse, it is highly unlikely that firms which primarily value profitability and quality above most other factors would dilute their quality at the top. The fact is that many law firms have actively worked at improving their internal systems, which allows high performers, many of whom happen to be women, to shine and be recognised.

"The firm actively encourages diversity in all its avatars, especially gender," explains Khaitan & Co executive director for HR, Amar Sinhji. "Towards making our firm more inclusive and supportive of women, a host of policies, including flexi time, work from home and truncated hours for returning mothers have recently been introduced. The firm is also introducing a structured mentoring programme beginning with our principal associates."

With 50% of incoming campus recruits being women ("selected based strictly on merit"), Sinhji says that this would, "over the next couple of years positively skew the gender balance in the firm".

Other firms at the lower-end in terms of gender balance, such as J Sagar Associates (JSA), which stands at 22% of its women being partners (dropping to 14% at the equity partner level), are also doing more. Joint managing partners Vivek Chandy and Amit Kapur explain in a statement that the firm now offered six months of maternity leave, in accordance with statutory requirements, had introduced creche facilities for working mothers, and has a flexible timings system to allow lawyers to "balance both work and needs of a young family". And the leadership at JSA has historically also included two female joint-managing partners as well as female partners represented in "important decision-making committees" at the firm.

But, not everything is about getting systems in place either. A large part may simply be a new-found awareness, sensitivity and practical attitudes of some issues by male senior partners, of which they

may have previously been (blissfully) ignorant.

"I think policies don't always work," says AZB Mumbai managing partner Zia Mody. "I'm a big believer in bespoke solutions, and that's still possible for Indian law firms because of their size."

"Not all our women get married and get pregnant at the same time," she notes. "It's possible for management to have bespoke conversations to understand the need of every woman separately. [When women ask for maternity leave or flexible working] there will be common concerns about time, ability, 'will I lose out in the race?', 'will my career be affected?'

"At this time it's very easy for partners or the team, to basically get irritated, etc, and that negativity feeds down to the woman in question, which then becomes a circle of diffidence and lack of confidence, and then she just quietly leaves. If you dive into that, it's a problem, it's a reality: there will be some disruption and unexpected availability, and therefore you need a backup that you bring in the beginning. You understand that a client won't pay for an extra hand, but as an organisation you're allowing the gap to be filled in and providing for limited redundancy for the period."

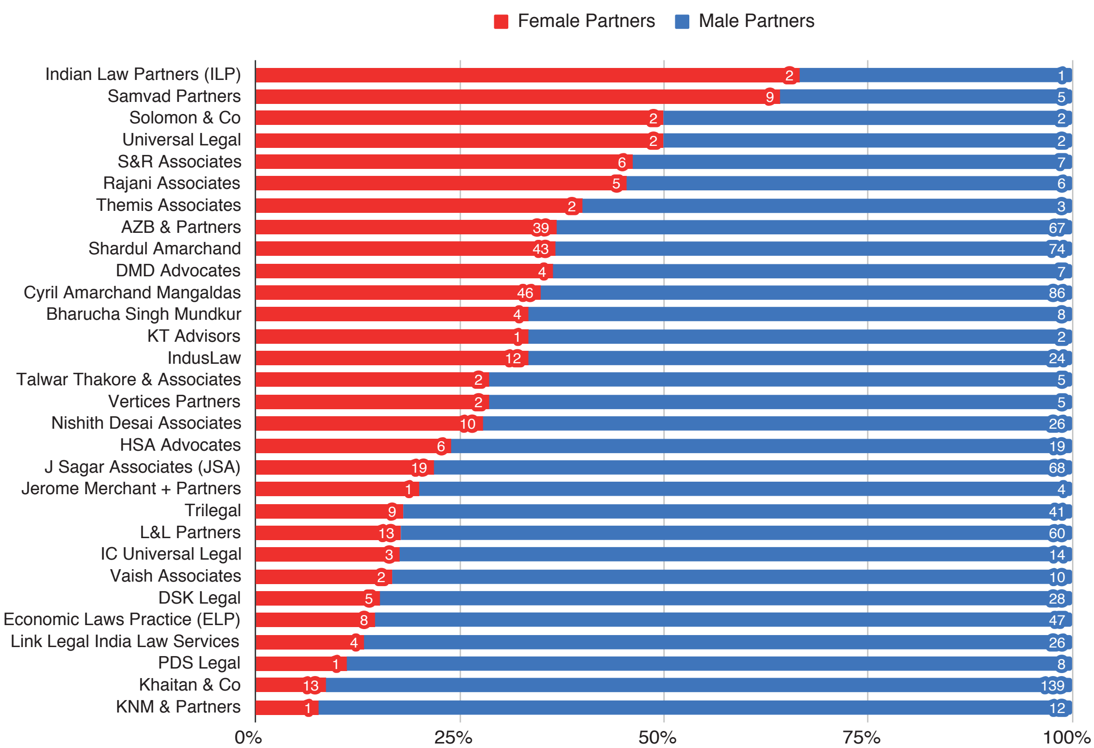
"It's an outlook change as well that's required," agrees Samvad's MG about how the profession can increase participation of women at senior levels. But she adds: "As compared to other Asian countries, India is ahead."

That is likely true: countries such as Japan, for instance, are well known for their dearth of women in corporate leadership positions, and the female partnerships at some of India's largest firms are far more gender diverse than nearly all international firms.

So, as India's top firms become more secure in their market position, with the most rapid growth behind them, many of are taking promising steps in the right direction.

However, it's clear that no change will come without deliberate efforts.

Female vs male partnership at top firms



ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Increasing Role of Forensics in Due Diligence

With increased liability of directors and calls for transparency, reporting requirements have magnified the relevance of micro-level due diligence.

The famous contract law principle 'caveat emptor' – Buyer Beware – is often used in commercial transactions involving M&A and other financial and strategic investment deals. Information asymmetry between a buyer and seller necessitates robust due diligence exercise on targets and promoters pre and post such transactions. While traditional methods of due diligences help in uncovering broader business, financial and legal risks, recent times of increased liability of directors, calls for transparency, and reporting requirements have magnified the relevance of micro-level due diligence.

Forensics has emerged as an important and effective tool for conducting comprehensive due diligences and helping investors have a microscopic view of target companies, their assets, liabilities, compliance gaps, suspicious transactions including those with related parties, investigations, shams, and corporate frauds, if any. The following trends are noteworthy:

— **Post-closing compliance audit:** While pre-closing findings from a due diligence help an investor take an informed decision and allocate risk in transaction documents, it is important to also consider post-closing compliance audits in light of the sunset period associated with indemnity claims. Such an exercise also can be a mitigation tool for the company and/or the new owners to protect them from exposure to the risk of a continuing offence, as deemed knowledge could be attributable to them.

— **Criticality of electronic evidence:** During investigations, authorities first and foremost target the IT systems of the company to gather electronic evidence and bolster cases against individuals and organisations, more so in cases of competition, income tax, CBI and SFIO matters. While existence of back-up data in a company's archives could attribute knowledge and amount to deliberate concealment of facts, a lack of diligence and failure to maintain appropriate risk management systems can trigger consequent liabilities. This makes it critical to identify any damaging data through a vendor diligence exercise.

— **Counterparty KYC and due diligence:** Another aspect that businesses need to consider is keeping checks and conducting appropriate KYC/due diligence on counterparties to contracts. If one is aware that its counterparty is engaging in any activity that could be considered as an offence of bribery, corruption or the like, and the same is connected to the business of the entity in any manner whatsoever, non-disclosure of such information and continuing to deal with such counterparty could be construed as deliberate concealment and amount to abetting the offence, which is punishable under Prevention of Corruption Act, 1988.

— **Risk on nominee directors:** Investors and their nominee directors are increasingly insisting on regular audits and compliance health checks. Duties of directors as codified under Section

Standard Bank case: This case demonstrates the consequences that can be faced by companies and/or their parent group for not following appropriate KYC/due diligence processes while consummating deals. Standard Bank Group Ltd, a publicly owned company registered in South Africa, was also the ultimate parent of Stanbic Bank Tanzania Ltd, a Tanzanian company based in Dar es Salaam ("Stanbic"). Stanbic was not licensed to deal with non-local foreign investors in the debt capital markets and such role was to be undertaken by Standard Bank. Standard Bank and Stanbic put forward a proposal by which they would be mandated to raise funds for the Government of Tanzania by way of a sovereign note private placement. Though the potential for corruption practices in this kind of a deal was huge, it was found that Standard Bank had failed to prevent bribery and had not conducted KYC and due diligence on counterparties where obvious red flags for bribery risk were present.

It was found that applicable policies at Standard Bank did not provide sufficient specific guidance and the company did not undertake an enhanced due diligence exercise to deal with the presence of any corruption red flags regarding involvement of a third party in the said government transaction. The case was resolved through the mechanism of a deferred prosecution agreement (DPA) and the requirements falling upon Standard Bank to fulfil were interalia payment of compensation of USD 6 million plus interest of USD 1,153,125, disgorgement of profit on the transaction of USD 8.4 million and payment of a financial penalty of USD 16.8 million.

166 of the Companies Act, 2013 (Act) do not distinguish between an executive and a non-executive director, which increases the risk for the latter even when they have a rather limited role in day-to-day management. Although the term "officer in default" applies only to executive directors under the Act, independent and non-executive directors (including nominee directors) can also be held liable under section 149(12) of the Act if acts or omissions by a company: (i) occur with the knowledge of such independent and non-executive directors that are "attributable through board processes", and with the consent or connivance of such independent and non-executive directors; or (ii) where such independent and non-executive directors have "not acted diligently".

CONCLUSION

Companies routinely generate large amounts of information on a daily basis, which creates a digital footprint of possible compliance gaps that can prove damaging in subsequent investigations. The onus is on organizations to deploy effective tools – including forensic analysis – to discover such gaps in order to analyze and mitigate present and future risk. ■

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ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Turbulence in Global Trade – Effective Strategies for Navigating Through the Headwinds

India's significant trade volume and capital flows underline the crucial role of foreign trade policy in the country's economic growth.

Let us start with some statistics about India's economy: (a) Starting from USD 452 billion in 1999, India's GDP crossed USD 2.6 trillion by 2017 – a growth of almost 6 times[1] during a period when global GDP increased by only 2.5 times; (b) Per capita income nearly trebled in the past two decades; and (c) Total exports from India (merchandise and services) have increased 8.73 per cent year-on-year in 2018-19 (up to February 2019) to reach USD 483.92 billion, while total imports have increased by 9.42 per cent year-on-year to USD 577.31 billion[2].

Increasing protectionism, the US-China trade dispute and uncertainty around Brexit have contributed to the lowest global trade volumes in 9 years.

Such significant trade volume and capital flows underline the crucial role of foreign trade policy in the country's economic growth. While these numbers are indeed impressive, they cannot be seen in isolation. The world is witnessing increasingly protectionist measures – in the past few years, we have witnessed significantly higher tariffs (including export taxes) and have experienced many trade barriers (including imposition of quality conditions, unreasonable/unjustified packaging, labelling and product standards, and requirement of additional trade documents like Certificates of Origin and Authenticity). This, compounded by the US-China trade dispute, uncertainty surrounding Brexit and a slowdown in China and Europe, has contributed to the lowest global trade volumes in 9 years.[3]

In this milieu, businesses are well advised to review their exposure to global trade risks from a supply chain perspective, input cost perspective and a broader regulation perspective, in order to ensure that effective response and mitigation strategies are in place.

EXPECTATIONS OVER THE SHORT AND MEDIUM TERM

- Tariff to continue either in the form of customs duties, along with the increase of trade actions such as anti-dumping, countervailing or L safeguard actions.
- Non-Tariff Barriers being built and introduced to disallow or frustrate the process, coupled with delay in licensing and clearing imports timing and increase in costs of goods.
- Endeavors by other regulators include bringing in customs valuation investigations for changes in related party contracts and transfer pricing regulations.
- Increase in restriction of data flow by way of compulsory storage of data locally, compulsory setting up of offices, mandated compliance of privacy, tax and audit compliances, all of which have high cost implications.
- Over-regulating laws for the use of emerging technology such as Artificial Intelligence, Blockchain and IOT; restricting data flows on E-commerce and introducing privacy regulations irrespective of individual data or commercial data sets.
- Tougher IPR regulations and restrictions on the transfer of technology restricting investments into strategic sectors or blacklisting the firms. Country sanctions including but not limited to export control sanctions which can impact the flow of trade and inward bound capital.

STRATEGIES AND MITIGATION STEPS TO BE MINDFUL OF:

— **A fair assessment of costs pertaining to raw materials should be done. The following factors should be taken into consideration:** A fair assessment should of costs pertaining to raw materials should take the following factors into consideration:

- Is it procured locally or internationally?
- How many sources of inputs?
- Expected availability and price patterns
- Duties and taxes
- Upcoming regulations and notifications which will have an impact on the raw materials or on the final product.

This will necessarily involve a detailed study of the businesses' supply chain so as to optimize costs along each element of the sourcing network. It is equally important to map alternative sources of procurement so as to minimize sole dependency on one particular method.

SANJAY NOTANI
PARTNER

Businesses are well advised to review their exposure to global trade risks from a supply chain, input cost and a broader regulation perspective.

— **Influencing policy outcomes through regular engagement with Government and concerned agencies:** The current global scenario presents a perfect opportunity for companies, sectors and industry associations to engage with Governments to monitor domestic policies and

regulations as well as guide them on positions being taken by them for proposed Free Trade Agreements (FTAs) / Regional Trade Agreements (RTAs) being negotiated. By way of illustration, India has been one of the key participants in the Regional Comprehensive Economic Partnership, i.e. ASEAN plus China PR, Japan, Australia, New Zealand and Korea RP that is being negotiated. In this situation, it is critical for sectoral leaders to take a position and open a dialogue with Governments to provide their inputs on negotiating FTAs and RTAs. An opportunity – risk matrix mapping can help the industry in approaching governments and putting forth their recommendations for securing and gaining market access during trade negotiations.

— **Trade compliance programs:** Trade compliance can broadly be divided into two silos: internal hygiene compliances and international trade compliances. There have been several instances where compliance programs have been critical in resolving issues of export control and sanctions, including country sanctions as well as financial crimes. Such programs typically include a quantitative element (cost reduction and optimization) as well as a qualitative element (correct classification of goods, valuation or country of origin). Fines are applicable if import procedures are followed incorrectly, if false or negligent drawback claims are submitted and/ or if inaccurate preferential trade agreement claims are made due to incorrect or fraudulent certificates of origin. Crucial to compliance would be clear communication between suppliers and buyers.

— **Emerging framework on data regulation:** There are regulations being introduced the world over in areas of data privacy and cybersecurity. Businesses will need to be prepared for complying with data privacy requirements in both domestic and external jurisdictions. To be future ready, companies will need to consider factors such as source of data, consent of the data provider and data security. Failure to take – and prove – effective steps can result in class actions suits, massive fines and reputational risks.

Businesses need to now be 'hyper' prepared. The next generation market will be for businesses which have started thinking ahead of the curve.

CONCLUSION

Protectionist measures across the globe will increase, compliance requirements will become more stringent, regulatory uncertainty may persist – however, success comes to the prepared. In this scenario businesses need to now be 'hyper' prepared. The next generation market will be for businesses which have started thinking ahead of the curve. It will also be imperative to build mitigating and compliance strategies and simultaneously keep a focus on costs. Engaging with industry regulators and dialogue with the Government are important factors to close this loop. Internal and external conditions not withstanding – it's all about efficiency, profitability and market access. ■

NOTES

1 The World Bank

2 The Ministry of Commerce, Government of India

3 The World Trade Organisation

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ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Fundamental Tenets and Laws of Succession Planning

Succession planning is essential for any organization to ensure continuing management, growth and development of the business without disruption.

Succession planning for safeguarding and optimal transitioning of wealth and control are emerging as a critical consideration for businesses in India, many of which are family owned/controlled and are characterized by significant promoter family stakes. While wealth preservation, ring fencing key assets and tax-optimized transfer to the next generation were the guiding features of such exercises earlier on, modern businesses look at corporate succession planning with the added lens of ensuring business continuity and operational competitiveness. In this context, promoters and companies need to reflect upon additional factors such as choice of successors (who may not necessarily be only from the family), composition for the board post-transition and rights of the promoters (including their successors), amongst others.

Modern businesses look at corporate succession planning with the added lens of ensuring business continuity and operational competitiveness.

The entire Raymond group dispute between the father-son duo is a prime example. A recent statement made by the promoter and chairman Gautam Hari Singhania highlights the gravity with which the succession planning needs to be looked at: *"Tomorrow morning if I die, God forbid, there are identified people who will take charge of everything. Raymond can run independently and competitively. My children are very young. I have a responsibility to my wife and children, to my employees and shareholders, my banks, institutions and customers".* Similarly, Yes Bank is deciding the fate of who will be at the helm of affairs after the erstwhile promoter and managing director Rana Kapoor had to step down after the RBI's directions.

BRIEF OVERVIEW OF LOCAL SUCCESSION LAWS

The origin of Indian succession laws can be traced back to the year 1865 when a draft of the Indian Succession Bill was first submitted by the third law commission in its first report for the year 1854-55. Originally it was proposed as the Indian Civil Code, a title which was later altered to Indian Succession Act, 1865. A number of legislations relating to succession were passed from the year 1865 to 1925 and all these legislations were consolidated in the year 1925 and the Indian Succession Act, 1925 (Succession Act) was enacted.

A separate legislation governing Hindus – including Buddhists, Jains and Sikhs – was enacted in the year 1956, namely the Hindu Succession Act, 1956 (Hindu Succession Act). Accordingly,

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MANENDRA SINGH
SENIOR ASSOCIATE

SUCCESSION IS PRIMARILY OF TWO TYPES:

— **Testamentary succession:** This means succession by way of a 'Will'. A Will is a legal declaration of the intention of the testator (an individual who makes a will) with respect to his property which he desires to be carried into effect after his death. The registration of a Will is not compulsory but if so desired it may be registered by the testator during his lifetime.

— **Intestate succession:** When a person dies without making a Will, his property devolves as per the provisions of Succession Act and Hindu Succession Act (applicable to Hindus) and it is known as intestate succession. In case of intestate succession, (a) if the deceased was governed by Succession Act, a letter of administration is required to be obtained from the court of competent jurisdiction for administration of the property of the deceased; or (b) if the deceased was governed by Hindu Succession Act, the property devolves in accordance with the provisions of the Hindu Succession Act, to Class I heirs, Class II heirs, agnates or cognates, as the case may be.

Hindus are governed by the Hindu Succession Act and certain other provisions of the Succession Act. Muslims have their own textual law of inheritance, while Parsees, Christians and the persons whose marriage is solemnized under the Special Marriage Act, 1954 are covered under the Succession Act.

A weak succession plan can lead to adverse implications for both the successors as well as the business. A number of factors need to be borne in consideration.

CRITICAL DISCUSSION POINTS AND TAKEAWAYS

A weak succession plan can lead to adverse implications for both the successors as well as the

business. The following factors need to be borne in consideration:

- **Nominees vs successors:** On many occasions, the underlying wealth in a succession plan comprises of shares held by promoters. In such instances, the nominee of shares should not be confused with the successor as per the succession laws. While the Companies Act provides for a provision to nominate a person, the Division Bench of the Bombay High Court in its ruling pronounced on December 1, 2016, held that successor under the succession laws will prevail even if there is a nominee provided by the shareholder. It held that the object of the nominee provision is to ensure that the deceased shareholder is represented by someone, as the value of the shares is subject to market forces, and to ensure that the commerce does not suffer due to delay on the part of the legal heirs in establishing their rights of succession and claiming the shares of a company. It also clarified that usage of the term 'vesting' under the Companies Act is not intended to create a third mode of succession and that the Companies Act has nothing to do with the law of succession.
- **Income-tax considerations:** As of today, India's Income-tax Act, 1961 (IT Act) does not contain any provisions pertaining to inheritance tax and no tax implications will arise on legal heirs on receipt of any property under a Will or pursuant to intestate succession. However, it is rumoured that an inheritance tax is being contemplated by the government. If and when such legislation is enacted, succession plans will need to account for inheritance tax and undertake efforts to optimize the potential impact.
- **Use of 'trusts' in succession planning:** While preparation of a Will indeed helps reduce disputes between legal representatives and heirs, devolution of assets still needs to be structured appropriately to ensure smooth transition. A private trust under the Indian Trusts Act, 1882, is a popular route to structure succession planning. Trust structure is quite flexible (offering the possibility of various permutations to meet stated objectives of any succession plan) and is also tax neutral. Following the amendments to the IT Act, it has been provided that any property received from an individual by a trust created solely for the benefit of the relative of the individual (the term 'relative' has also been defined under the IT Act) will not give rise to any tax implications in the hands of the trust. Tax implications on the beneficiaries at the time of distribution of assets will, of course, have to be analysed based on the trust structure.
- **IPR arrangements in succession plans:** Promoter interest in a business can also be in the form of intellectual property rights (IPRs), where family members have IPR sharing arrangements for their separate businesses. In such cases, the importance of dealing with IPR arrangements becomes a critical factor and should be accounted for properly, in order to avoid litigation and disputes.
- **Timing of the plan coming into effect:** While choosing a successor is important, it is equally imperative to decide the time when the planning should be put in place, keeping in mind the dynamic economic and legal circumstances.

CONCLUSION

Many companies have announced the presence of such plans recently, in order to assure their investors and other stakeholders that promoters and management are thinking ahead to the future. Succession planning should indeed be considered as a must-have for any organization for ensuring continuing management, growth and development of the business without any disruptions. ■

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Renegotiating Power Purchase Agreements for Renewable Energy Projects

The Indian Government has set ambitious targets for renewable energy, yet must protect the existing portfolio and assure regulatory certainty.

The Government has, over the last decade, taken numerous measures to promote renewable energy. Apart from setting ambitious targets and rolling out programmes at the federal and state level, specialised agencies such as Solar Energy Corporation of India (**SECI**) and Indian Renewable Energy Development Agency (**IREDA**) have also been set up. In 2015, the Government set an ambitious target of achieving 175 GW of installed capacity from renewable sources by the year 2022 (100 GW from solar, 60 GW from wind, 10 GW from bio-power and 5 GW from small hydro). Achieving this target would involve substantial investment from private developers and regulatory certainty for protection of existing investments.

The Electricity Act provides for an enabling mechanism to promote renewable energy projects and encourage optimum investments.

The Electricity Act, 2003 (**Electricity Act**) provides for an enabling mechanism to promote renewable energy projects and encourage optimum investments. This is clearly discernible from the objectives set out under the Preamble, which reads as follows:

> *"An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto."*

Further, Section 61 and 86(1)(e) of the Electricity Act specifically puts an onus on the electricity regulatory commissions (being the sectoral guardian) to encourage optimum investments, ensure recovery of costs in a reasonable manner and to promote generation of electricity from renewable sources of energy.

The Electricity Act provides for two modes of

procurement of power by distribution licensees. The first mode is popularly known as the MoU route, where tariff is 'determined' by the Appropriate Commission (as defined in the Electricity Act) on a cost-plus basis. This mode is listed under Section 62 of the Electricity Act.

Of relevance to the renewable energy sector, even under the MoU route, there are 2 modes of determination of tariff, viz:

a) project specific tariff; and
b) generic tariff/feed-in-tariff (FiT)/normative tariff.

Under the project specific determination of tariff, all the components of tariff of an individual project are determined by the Appropriate Commission, on the basis of actual costs involved.

However, under generic tariff determination, the norms with respect to each component of tariff are determined for a defined control period, in order to devise a package basis which, power purchase agreements (**PPAs**) are entered into between the generating company and the distribution licensee. This is applicable to projects throughout the jurisdiction of the Appropriate Commission which are set up during the control period of the relevant tariff order and not to one specific project. The tariff order gives a choice to the developers to either accept the generic tariff or to approach the Commission separately for project specific tariff determination.

Typically, the State Governments issue policies for implementation of a pre-determined capacity, at a pre-approved generic/normative tariff. In turn, the developers or independent power producers submit their respective proposal for allocation of capacity showing acceptability to be bound by the generic tariff, irrespective of whether there are gains or losses in terms of actual costs.

The other route is listed under Section 63 of the Electricity Act and is popularly known as the 'bidding route'. Under this route, the price discovery is done basis a fair and transparent bidding process carried out by the distribution licensee in accordance with the guidelines framed by the Central Government. In such cases, the Appropriate Commission 'adopts' the tariff discovered though the bidding process. Under the competitive bidding regime, bidders quote tariff evaluating the feasibility thereof, based on the location of the project, support from the Government (in terms of land, ease in obtaining clearances, evacuation infrastructure etc.).

It should be noted that both routes are equally placed under the Electricity Act and there is no preference over the other.

As early as 2006, the Central Government issued the National Tariff Policy (**NTP**) to guide the Appropriate Commissions in discharging their functions under the Electricity Act. The NTP was issued to *inter alia* ensure availability of electricity to consumers at reasonable and competitive rates and ensure financial viability of the electricity sector while attracting investments. The NTP also envisaged minimum purchase of electricity

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The National Tariff Policy was issued to ensure availability of electricity to consumers at reasonable and competitive rates and ensure financial viability of the sector while attracting investments.

from non-conventional or renewable sources and directed the Appropriate Commission to fix a minimum renewable purchase obligation (RPO). The NTP further went on state that all power should be procured competitively by distribution licensees i.e., under the bidding route. This particular provision of the NTP providing for migration from the MoU route to the bidding route, led to an ambiguity regarding concluded contracts and also the procedure to be followed for future contracts. In the absence of guidelines and framework especially in the context of renewable energy, the said suggestion was difficult to achieve. Therefore, by way of clarification to the NTP, the Central Government specified that it would take some time before non-conventional or renewable technologies can compete with conventional sources in terms of cost of electricity and thus, contained a provision for procurement of such power at preferential tariff, to be determined by the Appropriate Commission.

We are today faced with a situation where the sanctity of already concluded contracts under the previous MoU regime have begun facing a threat.

In 2016, the Central Government revised the NTP to *inter alia* promote generation of electricity from renewable sources, increase the RPO of distribution licensees, introduce renewable generation obligation of coal/lignite-based thermal plants to establish/procure/purchase renewable capacity and waive inter-state transmission charges for renewable energy projects. The revised NTP re-emphasized that the States shall endeavour to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from waste to energy plants. The revised NTP provided that the procurement of power by distribution licensees from renewable energy sources from projects above the notified capacity, shall be done through competitive bidding process, "from the date to be notified by the Central Government". It further clarified that till such notification, any such procurement of power from renewable energy sources projects, may be done under Section 62 of the Electricity Act (i.e., under the MoU route).

It is worth mentioning that since the framework/guidelines in respect of renewable energy were not notified by the Central Government as on the date of notification of the revised NTP, the MoU route was the prevalent norm. The Government, in line with the objective of the revised NTP, formulated and notified guidelines for solar competitive bidding in August 2017 and for wind energy in December 2017 (**Bidding Guidelines**). Notably, competitive bidding for renewable energy projects was carried out even prior to the notification of the Bidding Guidelines. However, such procurement was scarce and procurement through the MoU route was the prevailing practice. Post issuance of the Bidding Guidelines, the regime of preferential tariff/MoU route virtually faded out giving way for competitive bidding.

While the shift in regime was appropriate in the context of future procurement, we are today faced with a situation where the sanctity of already concluded contracts under the previous MoU regime have begun facing a threat. One such glaring example of the prevalent confusion is seen in a recent statement made by the Government of Andhra Pradesh. In the statement, the State Government has indicated its intention to review already concluded contracts and to amend the tariff under these contracts to match it with the significantly lower tariff discovered under the new regime of competitively bid projects.

This is not the first attempt to re-open already concluded PPAs. In 2013, Gujarat Urja Vikas Nigam Limited (**GUVNL**) filed a petition before the Gujarat Electricity Regulatory Commission (**GERC**) seeking reduction in tariff by way of revision of generic/preferential tariff for solar projects as determined by the GERC in 2010. Primary reason cited for such tariff reduction was advancement in

technology resulting in lower capital expenditure for the solar project developers and public interest. GUVNL appealed before the Appellate Tribunal for Electricity (APTEL) where the matter was dismissed and an appeal is pending before the Supreme Court.

Another example of this nature was an attempt by the distribution licensees in Andhra Pradesh to seek cancellation of 41 wind PPAs before the Andhra Pradesh Electricity Regulatory Commission (**APERC**), and alternatively, to seek reduction in tariff in lines with the tariff discovered through competitive bidding. The said petition was also dismissed by the APERC upholding the proposition that normative tariff cannot be trued up on actuals i.e., be converted to project specific tariff.

There are other instances where the distribution companies have made attempts to require project developers to reduce generic tariff to bring it in line with that discovered through a competitive bidding process, notwithstanding the fact that such projects were awarded at an earlier point in time. It seems that while doing so, the distribution companies have disregarded that a comparison between prices of already established projects under the generic regime and competitively bid projects which are still under implementation, cannot be made for reasons, including:

a) prices discovered through the 2 (two) routes are distinct and incomparable;
b) previous investments and concluded contracts cannot be disturbed on account of subsequent advancements in technology;
c) bid-out projects have inherent advantages such as being set up in a solar park/wind farm with adequate arrangements in terms of availability of land, evacuation infrastructure, pre-obtained authorisations etc. along with incentives such as deemed generation which insulate them from the perils of forced backing down (which is the reality of the day, despite these projects having a must-run status). These factors result in lower prices; and
d) Generic tariffs are state-specific. 2 (two) states cannot be compared as the cost of land and labour, irradiance/wind velocity etc. would be location specific.

It is an undisputed fact that with reduction in input cost, tariff for renewable projects have declined. However, the question remains as to why a generator who has invested in the past, be made to suffer on account of subsequent drop in input costs. What is further perturbing is the measures being adopted by the states to reduce tariff. In several states, distribution licensees have resorted to arm-twisting tactics by way of not making payments of tariff for months altogether, thereby intending to hamper the operations of the project. While the quoted reasons remain poor financial health of the distribution licensees and the looming 'public interest', the move appears to be a deliberate attempt to force existing projects and their developers to concede to renegotiations for a lower tariff.

It is well a settled principle under the Indian Contract Act, 1872 (**Contract Act**), that a concluded contract between parties can be amended by mutual agreement. Parties can vary the terms of the contract and absolve a party from the original

It is an undisputed fact that with reduction in input cost, tariff for renewable projects have declined.

obligations. Section 62 of the Contract Act allows novation, modification/alteration of contracts. The Contract Act also gives rights to parties to put a contract to an end or terminate it. The principle being that a contract is the outcome of a mutual agreement and it is equally open to the parties to mutually agree to bring the said contract to an end, enter into a new contract or modify the earlier contract. However, such amendment should be mutual and not unilateral/forced.

It can be assumed that revision or amendment in tariff under a concluded PPA can be done by mutual consent of the parties or on account of a drastic change in circumstances which upsets the original bargain between the parties. With respect to the latter, the Supreme Court in the matter of *Gujarat Urja Vikas Nigam Limited v Tarini Infrastructure Ltd & Ors*[1] held that under the Electricity Act, it is the State Regulatory Commission which has been statutorily vested with the power to determine the tariff and that the tariff as may be fixed and incorporated in the PPA between the distribution licensee and the power producer is liable to be reviewed in light of a drastic change in circumstances. If in the changed scenario occasioned by a drastic alteration of the facts and circumstances surrounding the determination of tariff, a review of tariff is declined/refused, the power producer will be left with no option but to shut down its plants. Therefore, a review of the tariff on account of drastic change in circumstances would be fully justified, if the contract so permits. However, such precedents are to be adopted with caution and its application is limited to the circumstances described above. Drastic change in circumstance, by no stretch of imagination, could mean that a subsequent reduction in input costs can be used to upset the sanctity of a concluded PPA, especially when the costs have been frozen prior to the reduction in such costs.

In the concept of 'public interest', the Appellate Tribunal for Electricty has held that a balance has to be struck between the conflicting interests of consumers and other stakeholders.

Another aspect which is of relevance, is the concept of 'public interest'. Does the concept mean interest of the consumers alone? The position on this has been clarified by the APTEL in the case of *Gujarat Urja Vikas Nigam Limited v. Green Infra Corporate Wind Power Limited*[2] wherein it was held that consumer interest will not always override all other considerations or interest of other stakeholders and that a balance has to be struck between the two conflicting interests. It was further clarified that the power sector functions on the joint efforts of all stakeholders and health of all stakeholders should be the concern of the regulator. The regulator must realize its balancing role and recognize that those who generate renewable energy must be encouraged to enable them to remain in the power sector and flourish.

The sanctity of contracts has been upheld by the Supreme Court in a plethora of judgments and such sanctity cannot be disturbed at the whims and fancies of political parties and in the absence of compelling circumstances. The dichotomy in Governments actions are blatant. While at one hand, the Central Government has set ambitious targets for renewable energy and is providing enabling policy framework for expansion of capacity, the State Government on the other hand is looking at reducing tariff by trying to re-negotiate the concluded contracts/PPAs. While expansion programmes are a welcoming step, the Government must realize that preservation of the existing portfolio is equally important. Unless the base is protected, the structure will not stand. To attract fresh investments, regulatory certainty must be assured. ■

NOTES

1 Civil Appeal No. 5875 of 2012

2 2015 SCC OnLine APTEL 15

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Insolvency and Bankruptcy Code, 2016 – Jurisprudence Bolsters and Aids Implementation

India's Insolvency and Bankruptcy Code has both improved its business rankings and, arguably, its credit culture as well. Divyanshu Pandey & Soumitra Majumdar discuss its evolution.

India has managed to significantly improve its ranking in World Bank's ease of doing business report – from 130 in 2016 to 77. A major contributor to this is the enactment and implementation of a comprehensive insolvency resolution eco-system through the Insolvency and Bankruptcy Code, 2016 (IBC). Breaking the cumbersome, inefficient, subjective, *debtor-in-possession* model, the IBC ushered in a simple and modern framework which provides certainty of outcome, ensures value maximization for all stakeholders through a time bound process. IBC arguably has improved the credit culture in India.

The credit ecosystem survives on the prospects of timely and maximum recovery. Pursuant to implementation of IBC, we are witnessing green shoots of a robust credit ecosystem developing. This will, hopefully, lead to deepening of our financial markets where credit is affordable and less reliant on collateral.

Our judiciary has aided immensely in the successful journey of IBC so far. The adjudicating fora right from National Company Law Tribunal (NCLT) to the Supreme Court (SC), through their various judgements, have helped in ironing out the creases in implementation of IBC and laid down substantial jurisprudence on a relatively new legislation. In this article, we discuss the evolution of IBC complemented by some of the important judgments of the SC and how these judgments, in a time span of only two years, have paved the way for achieving IBC's stated objectives.

The SC has been particularly cautious in moulding the jurisprudence in a balanced manner – the thrust on economic revival and resolution has never overshadowed the principles of equity, natural justice and the imperatives of ensuring procedural and ethical propriety of a creditor – in – control process.

IBC: A PARADIGM SHIFT IN LAW – OVERRIDES OTHER LAWS

'IBC is a paradigm shift in law' – observed the SC in one of the earliest applications moved before it under the IBC.[1] This was the first case where the overriding effect of IBC was upheld by the SC. The SC had to decide on the issue of repugnancy between Maharashtra Relief Undertaking Act (MRU, a state legislation) and IBC (a central legislation) and which statute should prevail. The issue was that corporate debtor's liabilities and all related remedies of enforcement being suspended under the MRU, there was no debt due in law. Accordingly, an action under IBC against such a protected corporate

debtor could not be tenable. The SC observed that if the discretionary moratorium under MRU is to be held binding, then it will completely frustrate the insolvency resolution process outlined in the IBC and its objectives. Relying on the overriding effect of Section 238 of the IBC (i.e. non-obstante clause under the IBC) the SC recognized the wide terms in which Section 238 was couched. This was to ensure that any right of a corporate debtor under any other law should not defeat IBC's objectives.

This judgment established the primacy of the insolvency framework under the IBC, being an exhaustive code on insolvency. Being one of the first applications which reached the highest court under IBC framework, any different view would have put the efficacy of the insolvency framework in question.

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EXISTENCE OF A DISPUTE: TEST OF BONA FIDE CLAIMS

A large number of applications filed under the IBC are by operational creditors and IBC is allegedly being used by them as a recovery tool. The judgment in *Mobilox Innovations Pvt Ltd vs Kirusa Software Limited*[2] helped in distilling the instances when an application filed by an operational creditor can be entertained. This judgment clarified the ambiguity on the amorphous definition of 'dispute' under IBC. The definition of 'dispute' under IBC is an inclusive one and provides that 'dispute' includes a suit or arbitration proceedings relating to (i) existence of amount of debt; (ii) quality of goods or services; or (iii) breach of a representation or warranty. While examining this issue, the SC set out the difference in requirements, both substantive and procedural, with respect to applications filed by financial and operational creditors respectively. The SC outlined that applications filed by operational creditors under Section 9 of the IBC needs to be examined by NCLT to determine: (i) whether debt is an operational debt which is due and payable; and (ii) whether there is existence of a dispute between the parties **or** a record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute? If any of the above conditions are lacking, then the application will have to be rejected.

In relation to existence of dispute, the court read the word 'and' as 'or' in Section 8(2)(a) of IBC. The SC arrived at this view as reading it in any other manner would create a situation where without institution of suit or arbitration proceedings existence of a dispute cannot be established. Further, given the laws of limitation, a corporate debtor may not initiate any proceedings as long as limitation period is applicable and would become subject to insolvency proceedings even though a bona fide dispute exists. Relying upon interpretation of 'existence of dispute' in English and Australian cases, the SC held that while determining 'existence of dispute' the NCLT without going into the merit of the dispute needs to examine whether there is a '*plausible contention which requires further investigation*' and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence.

This decision has helped as a basis for rejection of many applications at the admission stage where operational creditors have tried to use the IBC for extraneous reasons i.e. as a tool for recovery.

TIMELINES ARE DIRECTORY AND NOT MANDATORY

One of the pivotal conditions of the IBC framework is the timelines specified for each part of its processes. Each part is regulated to ensure that the whole process is completed within the overall timeframe of 180 or 270 days, as applicable. This is essential to mitigate value destruction due to delays. While

the SC endorses this time- bound scheme, however, it balances this with the overarching imperative of achieving just outcomes.

When the IBC was implemented, the questions which arose were, 'what are the consequences of not adhering to the prescribed timelines', 'what remedy one has if timelines is not adhered to for procedural issues, or 'are these timelines realistic'? In this context, NCLAT in *Surendra Trading Company vs Juggilal Kamplamat Jute Mills Company*[3] examined the question "whether the time limit prescribed in IBC for admitting or rejecting a petition or initiation of insolvency resolution process is mandatory?". The NCLAT held that the period of fourteen days prescribed for the NCLT to pass such an order is directory in nature, whereas the period of seven days given to the operational creditor for rectifying the defects in its application is mandatory. On appeal, the SC noted that to serve the ends of justice, the period prior to admission of an application is not to be treated as mandatory – judicial decision making cannot be made subservient to technical rigors of timelines. The ends of justice will not be met if an application is rejected, not on merits, but on technical issue of defects. The SC though cited a word of caution and said that if defects cannot be removed within 7 days then application can be admitted only if NCLT is satisfied that there was a sufficient cause for the delay.

FOREIGN CREDITOR VS DOMESTIC CREDITOR: PROCEDURAL FORMALITY IS NOT MANDATORY

There is no distinction between a foreign creditor and a domestic creditor under IBC and they have similar rights. This is a marked departure from creditor protection laws[4] which were enacted for speedy recovery of debts of banks and certain financial institutions in India. The benefit of such laws is not available to foreign creditors. The remedy available to the foreign creditors was to file for winding up or a money suit- which were plagued with delays. This asymmetry only compounded the problems and resulted in worse outcomes for all stakeholders.

To ensure that IBC provides a level playing field to all creditors and procedural formalities do not obstruct availing remedy by a creditor under IBC, in *Macquarie Bank Limited vs Shilpi Cable Technologies Ltd*[5] the SC disregarded the procedural formality of having a certificate issued from an Indian financial institution[6] as a mandatory supporting document for insolvency resolution application of an operational creditor. The SC held that rights accorded to creditors under IBC, who are within its ambit, are similar without distinguishing their nationality. The only mandatory condition for triggering the process under IBC is occurrence of a default in payment of a debt which can be proven by other documentary evidence. Therefore, this condition cannot be mandatory condition precedent for filing of an application as it will create an artificial divide between foreign operational creditors who bank with an Indian financial institution and those who do not or cannot.

By recognizing that rights of foreign creditors cannot be diluted on account of procedural formalities, this judgment lent credence to the efficacy of the insolvency resolution regime under IBC. This judgment by preventing dilution of foreign creditors remedy helps in increasing availability of credit from foreign creditors to the Indian corporates.

LAW OF LIMITATION APPLIES TO IBC

An important issue arose whether law of limitation applies to IBC. The NCLAT in its various pronouncements had held that the limitation law does not apply to IBC and even if it applies, limitation will start after commencement of IBC i.e. after December 1, 2016. This question was also examined by the Insolvency Law Committee[7] and based on its recommendation the Indian Parliament in the second amendment to IBC[8] introduced Section 238A which provides that laws of limitation will be applicable to proceedings before NCLT and NCLAT. The question also arose before the SC, prior to the second amendment, and in a judgment delivered in B.*K. Educational Services Pvt Ltd vs Parag Gupta and Associates*[9] the SC clarified that laws of limitation applies and that too retrospectively. The court observed that IBC cannot be mechanism to resurrect a time barred debt as the consequences of filing under IBC can be dire leading to liquidation of a corporate debtor. The SC held that the trigger for filing under IBC is when there is default in payment of debt which is 'due and payable' that is a debt which should be due

under law and not barred by law of limitation.

ELIGIBILITY OF RESOLUTION APPLICANTS: SECTION 29A

One of the most critical and controversial sections of IBC is Section 29A. In order to ensure that the persons who, on account of their misconduct, contributed to defaults of companies or are otherwise undesirable, do not regain control of such companies by participating in the resolution process, the Government through the first amendment to IBC[10] inserted section 29A which sets out the disqualification criteria for resolution applicants.

The original section was cast in very wide terms and attracted substantial criticism from various quarters. Keeping in mind the practical difficulties thrown up by section 29A which limited the pool of eligible resolution applicants, this section was further amended by second amendment to IBC[11]. The scope of Section 29A (as amended) was first examined by the SC in one of the most bitterly fought court battle for insolvency resolution of Essar Steel.

In its judgment in *ArcelorMittal Indian Pvt Ltd vs Satish Kumar Gupta and Ors*[12] the SC laid down certain core principles in relation to applicability of Section 29A and who is required to examine such eligibility. The SC held that: (i) to arrive at persons who are actually in control whether jointly, or in concert with other persons, Section 29A is to be interpreted as a see through provision[13]; (ii) "Control" under Section 29A(c) denotes only positive control, thus, mere power to block special resolutions of a company cannot amount to control.; (iii) 'acting in concert' with an acquirer means that there should be commonality of objective and interest[14]; (iv) the ineligibility under Section 29A would apply from the date when the Resolution Plan is submitted and not before that; (v) the ineligibility under Section 29A(c) can be removed only if the overdue corporate debt is paid before submission of a resolution plan; (vi) relevant time to determine ineligibility under Section 29A(c) is date of submission of Resolution Plan, antecedent facts, reasonably proximate to this point of time can always be seen to determine the correct factual position. The competent authority must examine that by merely paying off debts the persons do not wriggle out of consequences of other ineligibility conditions.

The SC also took cognizance of the applications filed by resolution applicant(s) challenging the eligibility of other resolution applicant (s) on the grounds prescribed under Section 29A. With a view to reduce time spent in litigations adjudicating eligibility of a resolution applicant during insolvency resolution process, the SC ruled that a resolution applicant has no vested rights to challenge a resolution plan while the CoC is examining a Resolution Plan. Further, NCLT does not have the jurisdiction to interfere at behest of a resolution applicant under Section 60(5), before quasi-judicial determination under Section 31 of the IBC. The only reasonable construction of IBC is the balance to be maintained between timely completion of the corporate insolvency resolution process and the corporate debtor being put into liquidation.

It was also observed by SC that duty of a resolution professional (RP) is to examine the submitted resolution plans to ensure that they are complete in all respect and present it before CoC. A RP is not to decide upon eligibility of a resolution applicant. It is the CoC which will approve or disapprove a resolution plan under Section 30(4). Even the determination by CoC that plan violates provision of law including section 29A is not final and NCLT as quasi-judicial authority can determine whether a plan is violative of any law including 29A by allowing a resolution applicant and CoC to put forth their respective arguments.

By laying down the above core principles to be applied while interpreting ineligibility under 29A, the much-needed clarity on scope of application of Section 29A was provided by the SC. This judgment not only maintained the sanctity of IBC but also has helped in curtailing frivolous litigation under the garb of Section 29A, leading to inordinate delays and thereby defeating IBC's objectives.

IBC IS NOT UNCONSTITUTIONAL

The constitutional validity of IBC being challenged was a likelihood quite a few anticipated. More so because the prospect of losing one's business on account of non-payment of a loan was unimaginable in India. The constitutional validity of IBC was challenged in *Swiss Ribbons Pvt Ltd & Anr vs Union of India & Ors*[15]. The grounds of challenge were manifold: (i) no intelligible differentia between operational and financial creditors; (ii)

unfavourable treatment of operational creditors; (iii) unbridled adjudicatory powers vested in the CoC which is a non-judicial authority; and (iv) retrospective application of 29A imposing a blanket ban on promoters who are unable to pay debt due to extraneous reasons.

The SC upholding the constitutional validity of IBC reiterated the principle that scope of judicial review of economic legislation is limited and unless such legislation is arbitrary a court does not sit in judgment over such legislation. On the basis

The Supreme Court has demonstrated its will to uphold the IBC, in letter and spirit. It understands and appreciates the importance of such economic legislation and its role in the growth of the country.

of differences in terms on which financial and operational creditors advance credit to businesses, amounts lent by financial creditors being more, operational creditors outnumber the financial creditors, and the involvement of financial creditors in determining the viability of corporate debtor in distress, the SC upheld that there is intelligible differentia between the financial creditors and operational creditors. This differential treatment is not violative of Article 14 of the Indian Constitution.

On basis of its judgment in Arcelor Mittal, the SC reiterated that there is no vested right in the resolution applicant and hence rejected the challenge on retrospective application of Section 29A. The challenge that there is no distinction between a 'good erstwhile manager' and a 'bad erstwhile manager' was also dismissed on the ground that malfeasance is not the only ground for disqualification under Section 29A. Ineligibility can also be on grounds of disqualifications due to operation of law[16].

The SC also had an opportunity in this case to read down the scope of application of section 29A (as amended by the second amendment to IBC) by clarifying the term 'relative' in context of 29A (j) should be interpreted narrowly to mean only those persons who are connected with the business activity of the resolution applicant. This interpretation again exemplifies the SC's balancing act of ensuring fair play, but in a market dominated by family-run enterprises and conglomerates. A high-strung ethical stand, divorced from the reality, would have been an over-kill.

LIMITED JUDICIAL SCRUTINY OF COC DECISIONS

The design of the IBC is that insolvency resolution is a commercial decision and this decision- making power should vest with the financial creditors instead of being adjudicated upon. A resolution professional is mandated to act as facilitator of the entire process. The tribunal was designed only as a supervisory body to ensure procedural propriety and legality. This division appeared threatened in some cases – particularly, the amendment to Section 30 (4) of the IBC in June 2018, which introduced the requirement for the CoC to consider the feasibility and viability of a resolution plan before approval, as it had the potential to re-open every approved resolution plan and be challenged on account of commercial non-viability. This potentially dangerous trend was appropriately curbed by the SC in the case of *K. Sashidhar V. Indian Overseas Bank*[17]. The SC held that the IBC has not endowed the NCLT with any jurisdiction to analyse or evaluate the commercial decision of the CoC. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. The limited points of judicial scrutiny of CoC decisions primarily appear to be limited only to those pertaining to determinations made by the CoC under Section 30(2) or 29A of the IBC and mandatory requirements of IBC.

While this judgment does protect the commercial decision-making power of CoC in a CIRP, however, it does not absolve the CoC from the high degree of care and responsibility imposed on, and expected of, it.

CONCLUSION

A country like India always suffers from an infrastructure lag – the mounting work load of the various NCLTs, unless countered by proportionate increase in NCLT benches – may rob the CIRP of its potential. Certainty and clarity of jurisprudence evolved by the highest court of our country can naturally minimize the time spent in each of the cases. Needless to say, this has been invaluable in retaining the sanctity of the IBC. Further, an insolvency regime with certain outcomes can only incentivize stakeholders to resolve credit defaults through private negotiations in a timely manner, and not enter the adjudicatory arena – unlike the earlier regimes which almost incentivized defaults by protecting debtors at the cost of the creditors. IBC, as is being implemented and interpreted by the SC, does bear the promises of the above. The IBC has already facilitated the recovery of almost INR 60,000 crores, resulting in an increase of flow of credit to the economy. Other collateral benefits like improved credit discipline are already perceptible. All this would not have been possible had the legislation been struck down or the judicial authorities not appreciating the importance of not interfering in the scope of this legislation.

The SC has demonstrated its will to uphold the IBC, in letter and spirit. The above judgments clearly manifest that the highest court of this country understands and appreciates the importance of an economic legislation like IBC and its role in the growth of our country. Any other approach would have only had a debilitating effect. ■

The authors are partners of J. Sagar Associates, Advocates & Solicitors. The views expressed are personal.

NOTES

1 *Innoventive Industries v. ICICI Bank* (2018) 1 SCC 407

2 (2018) 1 SCC 353

3 (2017) 16 SCC 143

4 The Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 and The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002. Even the SICA (now repealed) was abused by defaulting borrowers.

5 (2018) 2 SCC 674

6 An operational creditor is required to file certain documents along with its application for initiation of insolvency resolution process. One such document is the copy of a certificate from a financial institution who maintains account of an operational creditor, certifying that no payment has been made towards unpaid operational debt. The definition of 'financial institution' under IBC does not include foreign banks or foreign financial institutions. This requirement created serious hardship for operational creditors who were non-residents and did not have an account with a financial institution in India to evidence non -payment of defaulted operational debt

7 A committee constituted by the Government on working of IBC and to suggest necessary changes.

8 Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 came into from 06.06.2018

9 2018 SCC OnLine SC 1921

10 Insolvency and Bankruptcy Code (Amendment) Act, 2017 came into effect from 23.11.2017

11 Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 came into effect from 06.06.2018

12 (2019) 2 SCC 1

13 The SC in this case for both Arcelor Mittal and Numetal lifted corporate veil to ascertain the actual beneficiaries behind the smokescreen created by complex maze of companies and trusts.

14 The SC relied on SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1994 to determine what is 'acting in concert'.

15 (2019) 4 SCC 17

16 Illustratively, under Section 29A (a) (an undischarged insolvent) and 29 A(e) (disqualification as a director)

17 2019 SCC OnLine SC 257

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Decoding the "Liquidation Preference" Clause in Investment Transactions

Liquidation preference continues to be used extensively by investors in investment agreements. Yet enforceability of the liquidation preference clause has not been extensively tested in Indian courts.

Most investors, whether private equity players or otherwise, prefer to have the protection of a liquidity preference clause in investment agreements to protect their investment in case of the happening of certain events.

Liquidation preference is the right of the investor, defined in an investment agreement, to receive its investment amount plus certain agreed percentage of the proceeds in the event of happening of a Liquidation Event. While liquidation in common law parlance is considered as winding up of a company, Liquidation Preference is triggered on the happening of events like sale of shares or substantial assets, an acquisition or merger of the company, consolidation, merger, amalgamation, demerger or where an arrangement is entered into with the creditors, etc. or in some cases even a 'nonqualified' IPO. Such events are generally defined as liquidation events in an investment agreement.

There are two types of liquidation preference: (i) non-participating liquidation preference and (ii) participating liquidation preference. Under non-participating liquidation preference, the investor will be entitled to receive its predetermined returns, but shall not be entitled to receive any portion of the surplus proceeds to be distributed to the equity shareholders. On the other hand, under participating liquidation preference, the investor, is entitled to pre-determined returns, and in the distribution of the surplus proceeds.

THE NEED FOR A LIQUIDATION PREFERENCE

An investor is keen to include a liquidation preference right in an investment agreement to ensure that it can get some return on its investment in case of the happening of a liquidation event as defined above. An investment agreement usually includes provisions that provide an assured exit to the investors at a fixed return post a specified period. However, the need for the liquidation preference protection arises in scenarios where a liquidation event takes place prior to the investor being provided an exit. In such a case it is essential that the investor receives return on its investment and such a clause finds its way in an investment agreement.

LEGAL ENFORCEMENT OF LIQUIDATION PREFERENCE:

There has been some debate on whether a liquidation preference clause is legally enforceable under Indian law. The confusion arises since by virtue of the provisions of the Companies Act, 2013 the preference shares and preference shareholders are entitled to preference upon liquidation of the

company. However, equity shareholders have not been specifically provided with such rights under the Companies Act, 2013. Section 43 of the Companies Act, 2013 provides that preference share capital, on winding up, has a preferential right on payment of amounts and premium. This would in turn imply that investors who have been issued equity shares would perhaps not be in a position to enforce its liquidation preference over the preference shareholders. In the erstwhile Companies Act, 1956, provisions with respect to different types of share capital were not applicable to private companies and hence the general view was that a liquidation preference clause with respect to a private company was legally enforceable as the preference right given to preference shareholders was not applicable in case of private companies. Initially, the Companies Act 2013 did not provide such exemption to private companies. This position changed when the Ministry of Corporate Affairs vide notification dated June 5, 2015 provided that a private company may be exempted from Section 43 and Section 47 of the Companies Act 2013. However, in such a scenario, the articles of association of a private limited company shall reflect that such private company is exempted from the applicability of section 43 and section 47 of the Companies Act, 2013. In view of the above notification, it can now be said that a liquidation preference clause with respect to private companies may be enforceable provided that the articles of such a company exempt it from the applicability of section 43 of the Companies Act, 2013.

In case of public companies the situation is a bit more complex as sections with respect to different types of share capital is applicable to public companies and there is no clarity as to whether a contractual understanding with respect to distribution of proceeds will be considered legally valid in such a scenario.

Also, the law is unclear as to whether the liquidation preference in case of preference shares, can have a participating right as highlighted above, over and above the preference capital in the company. One view is that as long as the shareholders of a company agree to such preferred distribution and the same is captured in the terms of the preference shares and in the articles of the Company, then such provisions should be binding on the Company and its shareholders.

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STRUCTURING OF THE LIQUIDATION PREFERENCE CLAUSE

The investors, by virtue of the rights assigned to them vide the investment agreements, are generally referred to as preferred shareholders. The liquidation preference clause is outlined in such a manner so as to ensure that returns or proceeds from a liquidity event are credited to the investor in priority to the other shareholders. The manner and degree in which the same is done varies from deal to deal and primarily upon the parties. However, as the name suggests, in liquidation preference, it is the preferred shareholders i.e. the investors that receive proceeds prior to or in preference to the distribution of the same amongst common shareholders.

On the happening of a liquidation event, generally, the proceeds are distributed to the investor in the manner highlighted below:

NON-PARTICIPATING LIQUIDATION PREFERENCE OR THE MULTIPLE:

A “multiple” of the investment amount is decided upon by the investor and in a liquidation event and the Company is obligated to provide to such multiple amount by attributing the proceeds to the investor. The multiple may be a 1x, 1.25x, 1.5x, 2x, 3x, etc of the investment amount. Generally, the investors either propose a non-participating liquidation preference with a higher multiple or

else 1x coupled with participating liquidation/ capped participation (explained below).

PARTICIPATING LIQUIDATION OR DOUBLE DIP:

Participating liquidation preference goes a step ahead from the "multiple" mechanism to secure the interest of the investor. In such a scenario, post the investor receiving its guaranteed return, the investor will also be additionally entitled to participation rights to share the remaining proceeds in proportion to the shares held by the investor. This mechanism is commonly referred to 'double dip'.

CAPPED PARTICIPATION

In a scenario where the investor and the company cannot settle for a conclusion between participating and non-participating liquidation preference, it is the capped participating that comes to rescue. Where an investor invests in a company, there is an internal rate of return i.e. IRR that the investor expects i.e. by and large the percentage of return on investor. A capped participation liquidation preference is what we can call as a "Restricted Double Dip". This is what can work for both for the investor and the company. Vide this mechanism, the investor receives his multiple, usually 1x of the investment amount, and has a further right to share the remaining proceeds in proportion to their ownership until it reaches a threshold amount which is generally the IRR or a multiple of investment (2x/3x).

CHOSEN PARTICIPATION

Another kind of technique that the parties resort in a situation of deadlock is providing the investor with the option of choosing the liquidation preference upon the happening of a liquidation event subject to certain restrictions. The investor is given a choice to opt for the option that provides higher proceeds. The options provided to the investor are either the non-participating liquidation preference/multiple, which in the current scenario is generally limited to 1x, or to convert their preferred shareholding into common shareholding to participate in the distribution of proceeds on a pro rata basis with the other shareholders. In a situation where the company is able to generate higher proceeds, the investor would choose conversion of its preferred stock into common shareholding however, in a situation where limited proceeds are generated, the return would be limited to 1x for the investor. The terms of conversion of the instruments subscribed to by the investors shall be given due consideration when this mechanism is adopted.

Example:

Where an investor invests Rs.1,00,000/- in lieu of 20% shareholding in a company and the said company is sold at valuations illustrated below, the table specifies the returns which the investor will be entitled to as per the opted liquidation preference:

WHAT THE INVESTOR RECEIVES?

	Company sold for Rs.1,00,000/-	**Company sold for Rs.5,00,000/-**	**Company sold for Rs.10,00,000/-**
Non-Participating (1x)	Rs.1,00,000/-	Rs.1,00,000/-	Rs.1,00,000/-
Non-Participating (2x)	Rs.1,00,000/-	Rs.2,00,000/-	Rs.2,00,000/-
Participating post 1x	Rs.1,00,000/-	Rs.1,80,000/-	Rs.2,80,000/-
Capped Participation (Cap on 18% return)	Rs.1,00,000/-	Rs.1,18,000/-	Rs.1,18,000/-
Chosen Participation	Either Rs.1,00,000/- or Rs.1,00,000/-	Rs.20,000/-	Either Rs.1,00,000/- or Rs. 2,00,000/- (20%)

Assuming that the other shareholders hold 80% shares of the company, the return that such other shareholders collectively receive, has been illustrated below:

WHAT THE OTHER SHAREHOLDERS RECEIVE?

	Company sold for Rs.1,00,000/-	**Company sold for Rs.5,00,000/-**	**Company sold for Rs.10,00,000/-**
Non-Participating (1x)	Rs. 0/-	Rs.4,00,000/-	Rs.9,00,000/-
Non-Participating (2x)	Rs. 0/-	Rs.3,00,000/-	Rs.8,00,000/-
Participating (assuming 1x)	Rs. 0/-	Rs.3,20,000/-	Rs.7,20,000/-
Capped Participation (assuming 1x and Cap on 18% return)	Rs. 0/-	Rs.3,82,000/-	Rs.8,82,000/-

BALANCING INTEREST:

Prima facie, it seems that for an investor choosing the option promising the maximum return is a wise option. However, if the interest of both, the investor and the company, is not balanced, there is a possibility that the investor may be shooting its own foot. Many a times the promoters' and small entrepreneurs give in the demands of the investors, however, what they lose in return is their motivation to strive for higher returns. Such a scenario adversely affects the company on a whole and in turn the investors are affected as well. Furthermore, the probability of future investors demanding the same preferential rights over the rights of previous investor increases which would adversely affect such previous investors.

MULTIPLE INVESTORS:

The complexities of the liquidation preference clause increase where in addition to the already existing investors, new investors step in the company. It is common to find series seed investment in a company followed by Series A, Series B, Series C and so on. The liquidation preference is rearranged in a company with new investments flowing in the company. However, the company and all investors collectively decide upon participating/non-participating/capped participation.

Seniority: Where the seniority structure is adopted, the investors from the latest rounds are given preference in terms of pay outs over and above the other investors i.e. Series A investors would be paid in priority over the Series Seed investor who would be paid in priority over the company. Continuing the above example, where a Series A investor invests Rs.1,00,000/- in a company post the investment by the Series Seed investor and the Company is sold for Rs.1,00,000/-, the Series A investor will receive its 1x i.e. Rs.1,00,000/- in priority whereas the Series Seed and Company would not be entitled to the proceeds.

***Pari-passu* or Pro Rata:** This is the generally adopted mechanism where all investments received in a company, as on a particular date, are considered to be 100% and investors pro rata percentage is calculated depending upon the amount of their investments. For example, if the total investment raised by a company is Rs.50,000/- from Series Seed Investor, Rs.50,000/- from Series A Investor and Rs.1,00,000/- from Series C investor the respective pro rata investment ratio would be 25% for Series Seed and Series A and 50% for Series C investors. The liquidation proceeds received

are then distributed amongst the investors, in proportion to their pro rata investment percentage.
Hybrid *Pari-Passu*: In a hybrid of *pari-passu*, some class of investors might be *pari passu* within themselves but senior to other classes. Such a scenario usually occurs where there are multiple funding rounds in a company of varied investment amounts.

CONCLUSION:

Liquidation preference continues to be used extensively by investors in investment agreements. Enforceability of the liquidation preference clause has not been extensively tested in Indian Courts. Most investors do insist on the inclusion of this clause in their investment agreements. While the enforcement aspect with respect to private companies appears to be fairly clear, until and unless we seek more clarity from courts or regulators, the enforcement of the liquidation preference clause in case of public companies will continue to be a matter of debate and discussion. ■

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Shardul Amarchand Mangaldas
CENTURY of EXCELLENCE

The National Company Law Tribunal in India

Shardul Amarchand Mangaldas analyse some recent trends and orders passed by India's National Company Law Tribunal.

PART A: INTRODUCTION

Before the establishment of National Company Law Tribunals ("**NCLTs**") under the Companies Act, 2013 ("**2013 Act**"), schemes of arrangement – being court approved arrangements or compromises between a company(ies) and its (their) creditors or members, fell within the purview of the High Courts under Sections 391-394 of the Companies Act, 1956 ("**1956 Act**").

The NCLT and the National Company Law Appellate Tribunal ("**NCLAT**") were constituted as specialized institutions to deal with corporate disputes and promote speedy disposal of matters pertaining to restructuring, rehabilitation and revival of companies. A notable trend that is emerging is that the various NCLTs are approaching company schemes somewhat differently from the High Courts under the erstwhile 1956 Act in certain cases and sometimes providing conflicting decisions. This has sometimes led to some transaction uncertainty as well as delay for clients choosing the NCLT route for transactions.

This article briefly examines some of these trends. To provide context, Part B of this article briefly sets out historically accepted and established principles relating to the role of courts while sanctioning schemes of arrangement, on the basis of which Part C then briefly analyses three sets of recent NCLT decisions which arguably deviate from these principles.

PART B: ROLE OF COURTS IN SANCTIONING SCHEMES OF ARRANGEMENT

The following landmark judgments of the Supreme Court ("**SC**") lay down principles relating to the role and level of intervention of courts while sanctioning schemes, and were relied on by the High Courts in India whilst considering schemes under the 1956 Act:

In *Hindustan Lever Employees' Union v. Hindustan Lever Limited and Ors.*,[1] the SC held that, courts in sanctioning claims of mergers are not to ascertain mathematical accuracy if the determination satisfied the arithmetical test. It held that a company court does not exercise appellate jurisdiction and it's not part of the judicial process to examine entrepreneurial activities. Section 394 casts an obligation on the court to be satisfied that the scheme was not contrary to public interest or unconscionable. The SC stated that the courts are required to examine a scheme for arrangement on the basis of the 'prudent business management test' and be satisfied that the scheme is not a device to evade law.

This was followed by the decision of the SC in *Miheer H. Mafatlal v. Mafatlal Industries Limited*[2], where it held that, the court should not sit in judgment over the informed view of the concerned parties to the compromise as this would be in the realm of their corporate wisdom. It held that the court neither had the expertise nor the jurisdiction

to delve into the commercial wisdom of creditors and members that have ratified a scheme by requisite majority and the jurisdiction of the court is peripheral and supervisory and not appellate. It held that the court cannot scrutinize a scheme with a view to find a better scheme that could have been adopted by the parties.

The SC identified the broad contours of the jurisdiction and role of courts while considering a scheme. These mainly comprised of monitoring compliance with requisite statutory procedures, ensuring that the scheme is just, fair and reasonable from the point of view of a prudent person taking a commercial decision, and ensuring that the scheme is not contrary to law or public policy.

Therefore, under the 1956 Act, courts adopted a non-interventionist approach while sanctioning schemes. The general market expectation was that the NCTLs would continue with this existing approach. However, aided by additional language in the 2013 Act, the NCLTs have in some cases been adopting what could be considered to be a more interventionist approach to schemes.

PART C: RECENT NCLT DECISIONS

Ajanta Pharma[3]

In September 2018, the NCLT in Mumbai rejected a scheme of arrangement between Gabs Investment Private Limited ("**GIPL**") and Ajanta Pharma Limited ("**APL**") on account of objections raised by the income-tax authorities. The facts and a brief snapshot of the NCLT order are as follows:

(i) APL is a listed company and GIPL is an investment holding company. The promoters of APL owned and controlled GIPL, which in turn held 9.54% of the paid-up equity share capital of APL.

(ii) The objective of the scheme was the extinction of the shareholding of the promoters in GIPL in exchange for the equity shares of APL. As a result, the promoters would hold the shares in APL directly rather than through GIPL. The scheme was approved by the members of both APL and GIPL with the requisite majority at their respective meetings

(iii) Following receipt of the notice delivered in terms of Section 230(5) of the 2013 Act, the income-tax authorities raised objections on the ground that the scheme was structured to avoid tax.

AKSHAY CHUDASAMA
MANAGING PARTNER

ARKA BANERJEE
CORPORATE PARTNER

Arguments of the income-tax authorities before the NCLT

The income-tax authorities argued that GIPL, being a separate legal entity, would have been subject to tax liability of INR 421.66 crores had the transaction been structured as a direct transfer of shares of APL from GIPL to the shareholders of GIPL. By way of the scheme, GIPL was instead transferring its shareholding in APL to its shareholders tax free, thereby causing a loss to the exchequer. They also argued that the amalgamation was an impermissible avoidance arrangement to avoid tax under the General Anti-Avoidance Rules ("**GAAR**").

NCLT Order

The NCLT held that the scheme should comply with applicable laws and be in public interest for it to be approved. It noted that the companies had failed to satisfy it regarding compliance with the appropriate tax laws and ordered a resolution of the tax issues before sanctioning of the scheme.

Analysis

In terms of the Income-Tax Act, 1961, a shareholder may, in a scheme of amalgamation, transfer shares of an amalgamating company in exchange of shares of the amalgamated company without the levy of capital gains tax.

The submissions of the parties to the court was that the scheme would permit a simplification of

the holding structure, eliminate multiple levels of shareholding and bring in transparency. An overwhelming majority of the shareholders of the transferee company had voted in favour of the merger and save for the income tax authorities, other regulators had not found any objections to the scheme.

Notwithstanding these arguments, the scheme was disallowed. The previously understood position was that schemes could be disallowed on the basis of tax frauds. No such fraud was established in this case. Accordingly, the decision raises interesting questions in relation to the extent to which tax issues may affect the ability of parties to effectuate a court based arrangement in future. Clients should bear in mind and evaluate the possible consequences of any tax structuring envisaged under their scheme.

In our view, the better interpretation is that Section 232(6) of the 2013 Act does not require an actual date to be provided as the Appointed Date so long as the Appointed Date is capable of determination under the scheme.

***Wiki Kids*[4]**

In July 2017, the NCLT in Hyderabad rejected the scheme between Wiki Kids Limited ("**Wiki Kids**") and Avantel Limited ("**Avantel**"), on account of the scheme benefitting only the common promoters of the parties ("**NCLT Order**"). The NCLT Order was upheld by the NCLAT. The facts and a brief snapshot of NCLT Order are set out below:

(i) Wiki Kids, an unlisted company and Avantel, a listed company proposed a scheme before the Andhra Pradesh High Court ("**APHC**"), seeking directions regarding the meetings of the shareholders and creditors to approve the scheme. Wiki Kids (transferor company) was promoted by the promoters of Avantel (transferee company) which held 99.9% of the paid-up share capital of Wiki Kids.

(ii) Pursuant to directions of the APHC, the scheme was approved by the shareholders of Wiki Kids. In the meantime, the case was transferred to the NCLT.

(iii) The NCLT, upon perusing various documents, including the share exchange ratio and valuation report computed by an expert independent chartered accountant, observed that the objective of the scheme, which set out that the amalgamation would result in improved cash flows was not justified considering that Wiki Kids had not commenced operations and had no operating income. It observed that the scheme circulated to the shareholders and creditors neither provided necessary information nor disclosed the fact that the shares of Avantel were being allotted to the common promoters of the companies, which prevented them from taking an informed decision. The scheme was rejected for being beneficial to the promoters and no public interest was being served by the amalgamation as envisaged in the scheme. Aggrieved by the NCLT Order, the parties approached the NCLAT.

Arguments before the NCLAT

It was argued that all applicable legal requirements had been complied with and there were no objections from any concerned regulatory authorities. It was also argued that the NCLT Order was based on the numbers in the balance sheet of Wiki Kids and failed to consider the potential business model developed by it.

NCLAT Order

The NCLAT upheld the NCLT Order and held that a scheme should be in the interest of all shareholders and not only for a few. The NCLAT clarified that the NCLT comprises of both judicial and technical members and had enough expertise to examine a scheme to ensure that it is fair and just to all shareholders. The NCLAT agreed that while it may not be desirable for the NCLT to look into mathematical details, if the scheme appears to be unfairly beneficial to a particular class of persons,

then the court should exercise its expertise and refuse to approve a scheme if, in its opinion, it doesn't uphold public interest.

Analysis

The SC has previously held that the court should not ordinarily scrutinize the arithmetic accuracy or commercial viability of a scheme, if it is approved by the shareholders and creditors of a company. The valuation in this case was undertaken by an expert, and public shareholders of Avantel voted in favour of the scheme. There were no objections to the scheme. Regardless, the NCLT *suo motu* examined the financials of Wiki Kids in detail and disallowed the scheme on the basis that the valuation was not credible and the NCLAT upheld this approach. This appears to be an extension of the role envisaged by the Supreme Court for courts considering schemes and may pose challenges for restructuring exercises where a company does not have established cash flows or has one that is difficult to accurately value (as is the case with startups for example).

Conflicting Decisions on Appointed Date

The Appointed Date is the date from which assets and liabilities under the scheme transfer whereas the Effective Date is the date from which the scheme comes into effect. Thus, schemes come into effect on the Effective Date with effect from the Appointed Date.

Some companies have prescribed that the Appointed Date shall be the Effective Date of the scheme, whereas others have set out a fixed date as the Appointed Date for the scheme. Specifying that the Appointed Date shall be the Effective Date is particularly useful in cases where the Appointed Date is not intended to be a past historical date and the scheme involves a number of conditions precedent (particularly regulatory approvals that need to be obtained as a matter of law) and the timeline for satisfaction of these conditions precedent is not known in advance. Recently, the NCLT has sometimes taken the view that the Appointed Date should be a fixed "hard" date and a scheme which provides that the Appointed Date shall be the Effective Date is not legally tenable. The provision relied on is Section 232(6) of the 2013 Act, which provides for the first time that a scheme of arrangement should, "*clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date*".

Effective Date as the Appointed Date

In *SCIL Ventures Limited and M/s Securities Research & Analysis Private Limited*[5], the NCLT in Mumbai accepted that the scheme was subject to requisite approvals and the date on which all such approvals are obtained and the order of the NCLT filed with the Registrar of Companies, would be the Effective Date as defined in the scheme and that further, the scheme would be effective from the Appointed Date, as mentioned in the scheme.

In *Vodafone Mobile Services Limited, Vodafone India Limited and Idea Cellular Limited*[6] before the NCLT in Mumbai, the implementation of the scheme was conditional upon the approval by the Department of Telecommunication ("**DoT**"), which could be obtained only upon sanction of the scheme by the NCLT. It was accepted that the Appointed Date and the Effective Date were prospective in nature, as also the provisions of the scheme which linked the Appointed Date to the Effective Date. The NCLT stated that while a scheme may be sanctioned, the Appointed Date of the amalgamation/merger may be delayed till pre-conditions are fulfilled.

In *In Re: UltraTech Cement Limited*[7] before the NCLT in Mumbai, the explanation that the Appointed Date in the scheme was defined as "shall be the Effective Date" and the Effective Date was defined as the date on which the scheme would become effective in accordance with its terms, was accepted. Therefore, the Appointed Date and the Effective Date would be the same date in accordance with the 2013 Act.

Appointed Date being a Fixed Date

In *East West Pipeline Limited and Pipeline Infrastructure Private Limited*,[8] the NCLT in Mumbai passed an order requiring a fixed Appointed Date for the scheme. The order states that, "*when it has been specified as 'date', it has to be conceived as calendar 'date', and it shall not be conceived as contingent upon approval of scheme by NCLT*". It held that the reason for having an identifiable date is that all financial implications of the scheme including the consideration payable thereunder, would be on the basis of a valuation conducted as of the Appointed Date.

In *Tata Teleservices (Maharashtra) Limited*[9] before the NCLT in Mumbai, the scheme was conditional upon the approval of the DoT and permission was sought to approach the tribunal with a fixed Appointed Date upon obtaining approval of the DoT. The NCLT sanctioned the scheme with an undertaking that the tribunal would be approached within three months of obtaining the approval of the DoT, with a fixed Appointed Date.

These cases are illustrative but show the conflicting decisions of the NCLT on this question. Under the supervisory jurisdiction of the High Courts under the 1956 Act, it was understood that the Appointed Date could be linked to the Effective Date.

Clients should be aware of these recent trends in order to make an informed choice to opt for a court based arrangement for their transaction and to structure it appropriately.

In our view, the better interpretation is that Section 232(6) of the 2013 Act does not require an actual date to be provided as the Appointed Date so long as the Appointed Date is capable of determination under the scheme. The decisions in *East West Pipeline and Tata Teleservices* can lead to significant challenges for transaction structuring – particularly where regulatory approvals with unclear timelines are involved and even more so where the valuation date for the transfer of assets and liabilities under the scheme is linked to the Appointed Date.

CONCLUSION

The judgments identified above indicate that the involvement of the NCLTs whilst dealing with schemes has in some cases been more intrusive than the earlier approach adopted by the High Courts pursuant to the position laid down by the Supreme Court. Grounds for disallowal of schemes could range from tax objections to questions of valuation which courts did not previously enter into in such detail, even where shareholders approve the transaction with the requisite majority or where regulators do not object to the scheme. The confusion around Appointed Dates also poses practical challenges in structuring a transaction and achieving closure. Clients should be aware of these recent trends in order to make an informed choice to opt for a court based arrangement for their transaction and to structure it appropriately. ■

NOTES

1 AIR 1995 SC 470.

2 AIR 1997 SC 506.

3 CSP No. 995/2017 and CSP No. 996/2017 in CSA No. 791 and 792/2017.

4 Company Appeal (AT) No. 285/2017

5 TCSP No. 158/230-232/NCLT/MB/MAH/2017, TCSP No. 159/230-232/NCLT/MB/MAH/2017, TCSP No. 160/230-232/NCLT/MB/MAH/2017.

6 CSP No. 1012/2017 & CSA No. 829/2017.

7 TCSP No. 338/2017 in CSP No. 881/2016 and Company Summons for Direction No. 772/2016.

8 CSA 719/2018.

9 C.P. (C.A.A)/3596/230-232/NCLT/MB/MAH/2018.

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India-Israel Commercial Relations: The Opportunities, Challenges and the Way Ahead

On the back of a series of diplomatic visits, bilateral trade between India and Israel is flourishing and set to grow even further. But with bright prospects there are also challenges.

INDIA AND ISRAEL DOING BUSINESS – BACKGROUND

Following the establishment of full diplomatic relations in 1992, India and Israel have enjoyed a fruitful partnership. Bilateral trade between the countries has been strengthened on the basis of mutual interests in defense, security, agriculture, IT and other sectors. Accordingly, the economic relations have steadily grown since, from $200m (diamonds and defense excluded) in 1992 to approximately $1.94bn in 2018.

The relationships between authorities have also strengthened over the last decade, as witnessed by a series of formal high profile visits: President Mukherjee in October 2015, Israeli president Rivlin in November 2016, Prime Minister Narendra Modi in 2017, and Prime Minister Netanyahu in 2018. Moreover, the two Prime Ministers initiated a joint CEO forum to encourage the development of the industrial collaboration between the countries. The forum assembled leading CEOs and took place in Tel Aviv in July 2017 during Prime Minister Modi's visit, and in Delhi in January 2018, during Netanyahu's visit.

These intensified diplomatic-economic relations eased the accessibility between the two countries in the forms of facilitating a business visa policy and an increase in the frequency of direct flights, which has multiplied threefold since the launch of Air India's Israel-India route.

India made a giant leap in the World Bank's Ease of Doing Business 2018 survey, having had increased to a rank of 77 from 132 in only two consecutive years, while Israel is rated as the third most innovative economy in the world in the Global Competitiveness Index, 2018.

PROSPECTS AND CHALLENGES

Prospects

The promising future of Indo-Israeli economic relations is clear when considering Israel and India's respective characters and achievements.

Israel has gained the reputation as the world's "start-up nation" with over 4000 start-ups, the largest amount per capita, and is ranked 3rd amongst the top start-up hubs in the world. In addition, Israel operates a welcoming FDI policy and bestows tax benefits and exemptions for foreign investors. Accordingly, there are no restrictions regarding non-residents holding shares in Israeli companies. Israel has been rated 0.118 in the "FDI Regulatory Restrictiveness" index in 2017, placing it as an open FDI economy, quite adjacent to the average of the OECD countries.

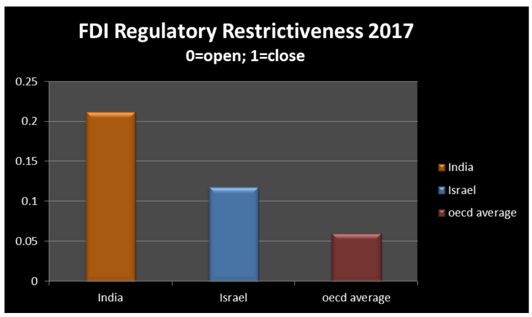
India is considered to have exceptional economic potential, with a huge population of 1.3bn people and a growing consumer market with a unique

demographic distribution (median age of 28 years). India aspires to increase its international trading scope and make a name for itself as a R&D and Innovation economy. For that purpose, the government has established a number of targeted initiatives, such as:

- "Make in India"- which has been devised to transform India into a global design and manufacturing hub.
- "Digital India"- the flagship program with a vision to transform India into a digitally empowered society and knowledge economy. As part of this initiative, India has experienced major growth with 1,200 new start-up companies amongst 7,200 start-ups overall in 2018.
- "Start-up India"- which is intended to build a strong ecosystem that is conducive to the growth of start-up businesses, and to generate large scale employment opportunities for the R&D professionals. As part of this initiative, India has experienced major growth with 1,200 new start-up companies amongst 7,200 start-ups overall in 2018.

These initiatives encourage cross-border inbound investments in early stage high-tech innovative ventures to increase their efforts in India; thus, aiming to move India from a services oriented economy to an innovation and technology driven economy, providing good opportunities for Israeli-based technology companies to expand to India and benefit from this growing market.

BENJAMIN GROSSMAN
PARTNER



Challenges

Nevertheless, Israel and India's industrial collaboration faces a few challenges that are important to be acquainted with, before the countries do business together.

Differences between Indian and Israeli regulations

In spite of the Indian government's "ease of doing business" efforts, India still maintains some level of regulations that, to some extent, may harden the access for foreign investors to do business in the country. One of these regulations is the policy on restricting foreign investment by the supervisory FIFP regulator and the RBI by the authority of the Foreign Exchange Management Act, 1999 (FEMA).

India's rating in the "FDI Regulatory Restrictiveness" (2017) index is 0.212, characterizing India as a relatively closed economy; while Israel's rating is 0.118, close to the OECD average. Recently, from February 1st, many actions and transactions under the Indian "Company Act 2013" as well as Insolvency and "Bankruptcy Code 2016" and certain regulations of SEBI require that the valuation will be carried out by Registered Value only.

Israel holds a liberal approach towards foreign investments in all sectors. Foreign investors are not required to gain authorization from the government to conduct business, except if the business being done falls under the regulated sectors.

Differences in legal instruments and establishments

India and Israel's legal foundations have both been developed from the British legal system and the

common law. However, in the past 70 years each legal system has developed in different directions, creating some differences in legal institutes and establishments, and some legal practices.

For example, there are differences in labor law, types of incorporated entities, perception of some legal instruments and more. All are important to become acquainted with, before doing business overseas.

While in India there is a wide variety of incorporated legal entities which differ in their legal capabilities, in Israel there are two common types of legal entities whose main purpose is to gain profits for their owners: “Company” and “Partnership”. Company can be either “Private Company” or a “Public Company” with securities registered on a Stock Exchange and held by the public.

Immigration and visa policies

Both Israel and India require an adequate visa for visitors and employees. Although the policies are different in some aspects, in the last few years both countries are making an effort to ease the visa process. For example, recently India launched a one year business e-visa. Still in some cases the requirements for the particular type of visa may be found to be challenging.

Differences in tax laws and rules

Naturally, there are distinctions between the taxation policies of the countries. For instance, the broad Permanent Establishment **(“P.E”)** definition in India is wider than the Israeli one, and exposes foreign firms to P.E exposure such as extent taxation even going back 6 years retroactively.

However, Indian companies are exposed as well to P.E in Israel. The profits of an Indian enterprise will be taxed in Israel if the enterprise carries out business through an Israeli P.E that is situated in Israel. If the enterprise carries out business as aforesaid, the profits of the enterprise may be taxed in Israel, only if so much of them are attributable to that P.E.

In addition, Israel-India trade relations are still lacking a Free Trade Agreement (“FTA”), which has been under negotiation for more than a decade. There are also challenges in the field of offset requirements, GST implications and other issues.

How to overcome the challenges and meet the prospects

Despite the challenges above, we are witnessing an improvement in some areas. Driven by the proven economic benefits of the industrial collaboration, both the governments of India and Israel are making efforts to increase and encourage joint initiatives and co-operation between the markets.

Since 2016 India has initiated some reforms that have eased foreign investment (FDI) and encouraged non-resident investments and enterprises in the country. Many of the sectors had been excluded from FDI restrictions, and the others have been eased substantially.

Moreover in the taxation aspect, Israel and India have been engaged since 1996 in a bilateral tax treaty: the Avoidance of Double Taxation Agreement (“ADTA”), the same having been amended in 2017 by the Amending Protocol. The “ADTA” designated for the Prevention of Fiscal Evasion with respect to taxes on Income and on Capital gains. As per the Treaty, gains derived by an Israeli entity from the alienation of shares or similar rights in an Indian company, are taxable both in Israel and India. The same rule applies to gains from alienation of partnership interests, trust units and estates. In this context, it is important to note that the Treaty makes no other distinction for the purposes of capital gains, between listed and unlisted shares, or otherwise.

Nonetheless, for the purpose of avoiding double taxation on the same income, the Treaty provides that Indian tax paid in respect of capital gains arising from sources in India shall be allowed to be credited against Israeli tax payable in respect of such capital gain. The Treaty therefore follows the tax credit method, as opposed to the tax exemption method, under which a head of income taxable in one State is exempt from taxation in the other State. In no circumstances however, will the credit given exceed the net Israeli tax chargeable on such gains. Gains from the alienation of any other property (other than gains from immovable property) are taxable only in the State of which the alienator is a resident.

The Israeli government encourages investments in R&D and innovation, and driven by liberal values rewards foreign investments by a series of laws:

Law for the Encouragement of Capital Investments, 5719-1959

The Law for the Encouragement of Capital Investments, 5719-1959, generally referred to as the Investment Law, provides certain incentives for capital investments in production facilities (or other eligible assets) by "Industrial Enterprises" (as defined under the Investment Law). The incentives may be in the form of grants or tax benefits.

Tax Benefits for Preferred Technological Enterprise

A Preferred Technological Enterprise (as defined under the Law) shall be taxed at a rate of 7.5% if located in "Area A" (certain areas in Israel defined by the government) and 12% if located elsewhere. If this is a "Special Preferred Technology Enterprise", corporate tax will be imposed at a rate of 6%.

The rate of tax on dividends paid by a Preferred Technological Enterprise is 20%, whereas a foreign resident will be taxed at a rate of 4%.

Capital gains tax for a Preferred Technological Enterprise and for a Special Preferred Technological Enterprise for a foreign resident company shall be 12% or 6%, depending on certain circumstances.

Law for the Encouragement of Industry (Taxes), 5729-1969

The Law generally referred to as the Industry Encouragement Law, provides several tax benefits for "Industrial Companies."

The following corporate tax benefits, among others, are available to Industrial Companies:

- Amortization over an eight-year period of the cost of purchased know-how and patents and rights to use a patent and know-how which are used for the development or advancement of the Industrial Enterprise.
- Under limited conditions, an election to file consolidated tax returns with related Israeli Industrial Companies.
- Expenses related to a public offering are deductible in equal amounts over three years.

Tax Benefits and Grants for Research and Development

Israeli tax law allows, under certain conditions, a tax deduction for expenditures, including capital expenditures, for the year in which they are incurred. Expenditures are deemed related to scientific research and development projects.

Foreign investments tax exemption – Section 97(B3) of the ITO grants **any foreign resident an exemption from capital gains tax upon the sale of securities of an Israeli company** (or a foreign company whose assets are mostly in Israel), upon fulfillment of the following conditions: (i) the capital gain is not derived in a permanent establishment in Israel; (ii) the security was not purchased from a relative and the provisions of Section E2 or the provisions of Section 70 of the Real Estate Taxation Law did not apply to it; and (iii) the security is not traded on the stock exchange in Israel on the date of the sale.

As witnessed, Israel encourages foreign investments through tax benefits, exemptions and other incentives. An example for a company that benefits from this policy is **Intel**. Motivated by Israeli tax benefit plans, Intel has invested $17 billion in Israel since 1974 and recently announced that it is making an additional investment of $10 billion in Israel. In addition to the tax benefits, this investment is predicted to profit the company a grant by the Israeli government, which is valued between $880m to $1.1bn.

Specifically, in the Indo-Israeli arena both governments have founded bilateral frameworks providing financial support for collaborative industrial R&D ventures between Israeli and Indian companies. As part of this initiative, Israel demonstrates good will and openness to share information and industrial knowledge. "The Israel Innovation Authority" initiated the I4Rd, India-Israel Industrial Cooperation Program, in collaboration with its Indian counterparts at the federal and state level, as well as with stakeholders in the private sector, in order to facilitate and implement access to funding schemes dedicated to the development of R&D-driven partnerships between Israeli and Indian companies.

Another program is "The India–Israel Innovation Bridge", a joint initiative of the Israel Innovation Authority and its Indian counterparts, in order to enhance the collaboration between start-ups from both countries' start-up ecosystems.

LATEST TRENDS

The improvement of India's ease of doing business (by 23 places in the World Bank's 2018 survey) is

one of the causes of India's increasing economic growth rate, with an estimated growth rate of 7.2% in 2018-19.

The improvement of commercial relations is backed by the leaders of both countries. For example, the visit of Prime Minister Modi to Israel in January 2017 was followed by Prime Minister Netanyahu's directive to coordinate a cross ministries effort to strengthen the political, economic, scientific and cultural ties with India.

All the above efforts and initiatives have led to an increase of 24.5% of exports from Israel to India in 2018.

In addition, in January 2018 the Prime Ministers signed several MOUs covering the following fields:

- Energy agreement in the gas and oil sector
- Cinema Cooperation Agreement
- Aviation agreement
- Cyber Agreement
- Mutual Investment Agreement – a statement of both governments reflecting the intentions to promote direct investments between the countries.

These MOUs join a number of bilateral agreements and institutional arrangements that veteran diplomatic relations have yielded over the years, such as: The Agreement for Cooperation in Agriculture (1993), The Agreement for Promotion and Protection of Investments (Jan 1996], Bilateral Agreement regarding Mutual Assistance and Cooperation in Customs Matters (1996), and MOU on India-Israel Research and Development Fund Initiative (2005).

Recently, we have witnessed a rise in the number of Indian companies engaged with Israeli companies, and vice versa, in a variety of fields. Among those engagements:

- **Infosys** investment in the Israeli analytics and optimization of cloud servers company "**CloudYn**" and in "**Cloudendure**", a Cloud Migration and Cloud Disaster Recovery company.
- **Mahindra** group's JV transaction with Israeli **Top Green House** in the field of protected agriculture.
- The acquisition of the Israeli **NaanDan Irrigation** company by the Indian company **Jain** Irrigation Systems.
- Indian **Sun Pharmaceutical Industries** acquisition of the Israeli-American company **Taro Pharmaceuticals.**
- The acquisition of **Givon**, a manufacturer of parts and assemblies for the aerospace industry, by **Wipro Infrastructure Engineering.**
- The acquisition of Israel-based **Upstream Commerce** by **Flipkart**, India's largest e-commerce marketplace.

FUTURE PROSPECTS AND CONCLUSIONS

Assuming that the encouraging policies by both countries will be maintained and even enhanced, the sentiment between the economies will get even better as well. The scope of trade is predicted to rise, due to potential growth in the range of business sectors and the number of players.

Hence, we suggest to businesses that are considering involvement or are already involved in the flourishing Israeli-Indian economic system, to recognize and reach their potentials, while taking advantage of the incentives at their disposals. While doing so, it is important to learn about the differences and challenges that may accrue along the way, and the methods to overcome them. ■

ABOUT THE AUTHOR

Benjamin Grossman, a partner at APM & Co., manages the firm's Indian Legal Practice.

For over 18 years, Mr. Grossman has developed expertise and acquired in-depth knowledge of Indian law and regulations as well as of Indian business culture and practices.

Over the years, Mr. Grossman has advised on a wide array of complex transactions and activities, including, the establishment of joint ventures, technological collaborations and joint production ventures, procurement and offset transactions and tender processes, and has led negotiations with various entities in India. Mr. Grossman also specializes in Transfer of Technology agreements, technological collaborations and licensing agreements, as well as investment, procurement and offset transactions.

Mr. Grossman has been instrumental in the initiation of fruitful collaborations between Israeli, Indian and other global companies.

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DILLON EUSTACE

Why Ireland as a Domicile for Investment Funds Investing in India

With a rise in Indian asset managers exploring the use of Irish investment funds, Brian Kelliher outlines the attractiveness of Ireland for asset managers investing in India.

Increasingly Ireland has proven to be the domicile of choice for asset managers seeking to establish investment funds investing in India which can be marketed to European and global investors.

More recently there has been significant interest by Indian asset managers seeking to establish and manage an EU fund that can be marketed easily across the European Union to investors who anticipate further growth in the Indian market as it begins to realise its undoubted potential. This interest has been enhanced by the relaxation of the foreign investment rules and the permanent establishment rules in India. Indeed, a number of Irish domiciled funds managed by Indian asset managers have recently obtained approval from the Central Board of Direct Taxes of the Indian Ministry of Finance under Section 9A of the Income-tax Act 1961, pursuant to which the Irish fund is not deemed to be resident in India by virtue of that fund being managed on a discretionary basis by an Indian asset manager.

WHY IRELAND?

There are a number of reasons why an Indian asset manager may choose Ireland as a domicile for its offshore investment fund, but the principle reasons are: (i) the regulatory environment; (ii) the common law legal system that Ireland and India share; (iii) tax efficiencies; and (iv) global reach given Ireland is a major hub for cross-border distribution and Irish funds are sold in 90 countries across Europe, the Americas, Asia and the Pacific, the Middle East and Africa.

Ireland is an internationally recognised jurisdiction with membership of the EU, Eurozone, OECD, FATF and IOSCO.

Ireland's tax regime is highly efficient, clear and certain, open, transparent and fully compliant with OECD guidelines and EU law. Irish regulated funds are exempt from Irish tax on income and gains derived from their investments and unlike Luxembourg funds are not subject to any Irish tax on their net asset value. There are additionally no net asset, transfer or capital taxes on the issue, transfer or redemption of units owned by non-Irish resident investors. Other than in respect of certain funds which hold interests in Irish real estate (or particular types of Irish real estate related assets), non-Irish investors are not subject to Irish tax on their investment and do not incur any withholding taxes on payments from the Irish fund.

Ireland has one of the most developed and favourable tax treaty networks in the world, spanning over 90 countries including India resulting in reduced withholding taxes on income/ gains from underlying investments.

IRISH FUND LEGAL STRUCTURES

Although Irish funds can be established in many legal forms such as an investment company, unit trust, investment limited partnership and common

contractual fund, the ICAV (Irish Collective Asset-management Vehicle) is the preferred legal structure. The ICAV is a corporate structure and provides the maximum flexibility for the operation of a collective investment scheme.

Unlike an Irish investment company which is treated as a corporation for US federal tax purposes, the ICAV can, similar to an Irish unit trust or Irish ILP, "check-the-box" to be treated as a partnership for US tax purposes and therefore can accommodate both US taxable investors and US tax-exempt investors.

IRISH FUND REGULATORY STRUCTURES

The regulatory fund structures in Ireland are UCITS and non-UCITS (the latter of which are referred to as "Alternative Investment Funds" or "AIFs").

An AIF can be established as a retail alternative investment fund (a "RIAIF") or a qualifying investor alternative investment fund (a "QIAIF"). However the QIAIF is the more widely used.

Both the UCITS and QIAIF regulatory structures can be marketed cross border within the EEA without the requirement to have the Irish fund approved or authorised in each EEA member state.

The main distinctions between a UCITS and a QIAIF are:-

(i) the UCITS is a fund that can be marketed to all categories of investors including retail investors whereas the QIAIF can only be marketed to qualifying investors. A qualifying investor is:
   (a) an investor who is a professional client within the meaning of the EU MiFID Directive; or
   (b) an investor who receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company to the effect that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the QIAIF; or
   (c) an investor who certifies that it is an informed investor by providing the following:
   - confirmation (in writing) that the investor has such knowledge of, and experience in, financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or
   - confirmation (in writing) that the investor's business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the QIAIF.

(ii) an investor in a UCITS is not subject to any regulatory minimum subscription amount whereas an investor in a QIAIF is subject to a minimum subscription amount of EUR 100,000 or its equivalent;

(iii) UCITS must provide for a redemption frequency of at least twice a month whereas QIAIFs can be (a) open ended (with a redemption frequency of once a quarter); or (b) open ended with limited liquidity (with a redemption frequency of less than once a quarter); or (c) closed ended;

(iv) while long only and certain hedge fund strategies can be structured as UCITS, a QIAIF can facilitate any investment strategy including one that involves alternative investments.

WHY IRELAND FOR DOMICILED INVESTMENT FUNDS

1. Certain regulatory environment.
2. Tax efficiencies.
3. English speaking common law system.
4. $4.2 Trillion Assets Under Management.
5. 16,000 professionals employed in the sector.
6. Over 950 Fund Managers from 53 countries.
7. 30 languages and 28 currencies supported.
8. Irish Funds marketed into 90 countries worldwide.
9. Full Access to the EU.

Irish regulated funds (whether a UCITS structure or a QIAIF) may be externally managed (e.g. by a fund management company which delegates various functions such as portfolio management, etc.) or may be self-managed (i.e. where no external fund management company is appointed and therefore the board of directors of the Irish fund remain responsible for all managerial functions notwithstanding any delegation of such functions such as portfolio management, etc.).

However, given the onerous regulatory obligations applicable to a self-managed fund for which the board of that fund are responsible, the establishment of externally managed funds has become the market trend.

TIMEFRAME FOR AUTHORISATION OF AN IRISH REGULATED FUND

Before an Irish regulated fund may commence any activities, the fund must be authorised by the Central Bank of Ireland.

The timeframe for the establishment and authorisation of an externally managed UCITS is generally three to four months taking into account the fact that once the prospectus is drafted and stakeholders have had an opportunity to review and comment on the draft prospectus, it must be submitted to the Central Bank for review and clearance before a formal application for authorisation of the UCITS may be submitted. Such an application must include all relevant fund documentation such as the final prospectus, constitutional document and service agreements.

The timeframe for the establishment and authorisation of an externally managed QIAIF is shorter than that for a UCITS given the Central Bank does not require to review any fund documentation in advance of authorisation of the QIAIF.

Notwithstanding the above, the overall timeframe for the establishment and authorisation of an externally managed UCITS or QIAIF is project dependent and among the milestones that require to be met on a timely basis to ensure that a reasonable timeframe is achievable is the selection of service providers, the Central Bank pre-approval of the directors of the Irish fund and of the investment manager and the finalisation of the prospectus, constitutional document and service agreements.

FPI REGISTRATION

In order to invest in India, a foreign fund must obtain registration as a foreign portfolio investor ("FPI") under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2015 ("FPI Regulations"). Irish regulated funds generally obtain the FPI Category II licence on the basis that such Irish funds are appropriately regulated broad based funds.

Although this application can be prepared in tandem with the Irish fund authorisation process, registration can only be finalised once authorisation of the Irish regulated fund has been obtained.

The application is made via the local Indian custodian (the "Designated Depository Participant" or "DDP") who is designated by the Securities and Exchange Board of India to process such applications. ■

BRIAN KELLIHER
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ABOUT THE AUTHOR

Brian Kelliher is a partner in Dillon Eustace. He is a highly experienced adviser on Irish financial services law focusing on asset management and investment funds, derivatives, foreign fund registrations, investment services, and regulatory and compliance. His investment funds practice covers all fund product types – from traditional UCITS, ETFs, money market funds and alternative UCITS to the full spectrum of Alternative Investment Funds (AIFs).

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ABOUT DILLON EUSTACE

Dillon Eustace is one of the leading law firms in Ireland with offices in New York, Toyo and Cayman. In relation to the practice area of asset management and investment funds, Dillon Eustace represents the largest number of Irish domiciled funds (Monterey 2014/2015/2016/2017/2018, Lipper 2009 to 2013), as well as funds domiciled in the Cayman Islands. Dillon Eustace has to date established approximately 22% of all regulated Irish funds which provides it with unrivalled experience.

Dillon Eustace currently act for a number of Irish domiciled funds established by Indian asset managers. Each of these are licensed as an FPI by SEBI. In addition some of these funds, which are managed on a discretionary basis by an Indian asset manager, have been approved by the Central Board of Direct Taxes of the Indian Government Ministry of Finance under Section 9A of the Indian Income Tax Act 1961.

Frost Brown Todd LLC ATTORNEYS

Building a Two-Way Street: A Guide for Indian Companies Seeking to Conduct Business in the US

While the US maintains its position as a top-5 contributor of FDI in India, this trajectory has mostly been a one-way flow. But India's future as a growing contributor of US FDI is under way.

The United States and India should view one another as important strategic business partners regionally and globally. With a common legal system of British heritage, democratic governance and relatively free market economies, one would think the two countries would enjoy more trade and mutual direct investment in one another than in European and other Asian countries. But they do not.

This is changing. Between 2007 and 2017, bilateral trade between the two countries rose nearly 120% to $126 billion, and US foreign direct investment (FDI) into India jumped nearly 300% to $44.5 billion.[1] It is projected that India could additionally benefit from the recent trade tensions between the United States and its major bilateral trade partners. According to Henry Kravis, co-chief of KKR & Co Inc., "This [trade war] is very positive for South East Asia and is very positive… for India."[2] In 2019, India rose 23 places to 77th in the World Bank's Ease of Doing Business Index, thanks to improving metrics in areas such as access to credit and construction permits. As India's infrastructure improves, its young population continues to innovate and its businesses look outward for growth beyond its borders. If relations between the United States and other countries in Asia grow shaky and if India further relaxes its protectionist tendencies to encourage, or at least not discourage, Indian companies from going global, Indian businesses could witness a spike in US investments in sectors including technology, education, finance, and healthcare.

The United States maintains its position as a top-5 contributor of FDI in India, but this trajectory has mostly been a one-way flow. But India's future as a growing contributor of US FDI is under way, with companies like automotive giant Mahindra & Mahindra and global technology leader Infosys making recent significant investments, building on earlier investments by Tata Consultancy Services and other pioneers, establishing facilities and creating thousands of jobs in the United States. Job creation attributable to each country in the other is proof that the relationship India and the United States shares is becoming increasingly mutually beneficial. Recent US Department of Commerce data show that US exports of goods and services to India supports an estimated 197,000 jobs; by comparison, the Confederation of Indian Industry's (CII) survey of Indian investment in the United States shows that Indian investment has helped create approximately 113,000 jobs in the US.

THE LANDSCAPE OF INDIAN INVESTMENT IN THE UNITED STATES

A 2017 CII Survey of Indian companies' investments and operations in the United States shows that Indian companies are one of the fastest growing sources of FDI in the United States by percentage measure. According to the Indian government, the United States is one of the top five destinations for investments from India. Indian investment is growing increasingly diversified and geographically dispersed across the United States. Indian companies have invested in and maintain operations in all fifty states, Washington D.C. and Puerto Rico with the highest concentration in New Jersey, Texas, California, New York and Pennsylvania. However, Midwestern states like Ohio, Indiana, Illinois, and Michigan are becoming popular hubs for Indian investment. Two recent standouts are JSW Steel's expected investment of $500 million in eastern Ohio in 2019 and automotive company Mahindra and Mahindra's $230 million operations investment in Detroit in 2018. Indian companies' contributions to the United States' economy are not limited to investing money and creating jobs, but also extend to corporate social responsibility initiatives through which companies have actively contributed $147 million to the local economies where they operate. The future of Indian investment and the growth of Indian operations in these sectors in the United States is bright with SelectUSA of the US Department of Commerce reporting that Indian investment into the United States is the ninth-fastest growing of all countries.

UNLOCKING THE MARKETPLACE

As more Indian companies enter the American marketplace, the first questions we're asked often pertain to the ease and method of conducting business in the United States. While Indian businesses are free to invest in the US with ease, succeeding in this highly competitive market is a challenge. All businesses, foreign and domestic, are subject to a network of rules and regulations that support the US free-market economy and ensure fair competition, protections for employees, and advancement of policies set by local, state, and federal authorities. Each of the fifty states has its own set of laws and regulations. Understanding how the American system works and its compliance requirements are crucial to a business expansion strategy.

JOSEPH DEHNER
INDIA DESK CO-CHAIR

SUNRITA SEN
INDIA DESK CO-CHAIR

GENERAL/LEGAL REGULATORY ENVIRONMENT

The United States welcomes foreign investment and the barriers for entry for Indian companies and persons looking to invest in the country or start a business here are very low. Indian companies enjoy the same freedom as domestic companies to establish businesses in the United States, with the rare exception of high-profile acquisitions of assets deemed essential to US national security, though there is no existing example of an Indian business acquisition being rejected on these limited grounds. Unlike in India, companies in the United States are organized under the laws of individual states and national regulation of company matters is generally limited to specific limited areas such as public company matters (companies whose securities are publicly traded), federal tax matters and various

Indian investment is growing increasingly diversified and geographically dispersed across the United States.

nationally applicable workforce laws and regulations.

INVESTMENT AND INCENTIVES

The federal government does not provide any negotiable economic incentives to either foreign or domestic investors. But individual states and localities compete vigorously for new and retained business locations and expansions by offering a wide variety of financial inducements. These include incentives largely based on the number of jobs to be created or retained and can offer financing, training, technical assistance, site amenities, and tax abatements to an Indian investor. These incentives must be pursued at an early stage as they become largely unavailable once a company commits to a certain location. While most Indian businesses have historically chosen to locate themselves on the east or west coast, the Midwest is an increasingly attractive region, with states like Ohio, Illinois, and Michigan each hosting over fifteen Indian companies with established operations, and Minnesota, Iowa, Indiana, Kentucky and Tennessee each home to 5-15 companies of Indian origin. The attractiveness of the Midwest stems from the availability of economic (specifically tax) incentives, low costs of labor, energy, and rent, and a large pool of talent from some of the best universities in the country. Meeting with service providers well-versed in incentive programs and the general lay of the land across the country early in the process can be hugely beneficial for Indian investors and business owners who may not be fully aware of the country's business landscape.

India's future as a growing contributor of US FDI is under way, with companies like automotive giant Mahindra & Mahindra and global technology leader Infosys making recent significant investments, building on earlier investments by Tata Consultancy Services and other pioneers.

CHOICE OF ENTITY

Each Indian business seeking to conduct business in the United States must choose one of several legal forms. One choice is to register a branch, which results in the Indian company being directly present in the US and itself a US taxpayer. Except for banks, for which a branch is almost the only choice because of regulatory and commercial factors, a branch is rarely used, as it puts the Indian company's assets at full risk of US operations. Indian business almost invariably choose one of two types of organization to limit their US risks to the capital invested in the US venture -a limited liability company (LLC) or a corporation.

Limited Liability Structures

Most Indian companies seek to establish a US entity that provides limited liability so only the capital contributed to that US entity is subject to any type of risk. States offer a variety of choices to achieve this goal but the most widely used of these are the limited liability company (LLC) and the corporation.

LLC: An LLC provides limited liability to its owners, flexibility in management and the ability to allocate profits, tax treatment and other choices as the owners choose. An LLC can be formed in minutes on-line, generally without any required minimum capital and without publicly disclosing details of ownership or management. Articles of Organization are filed with a state's Secretary of State, using a name not used by others. The members (owners) normally enter into a private Operating Agreement that sets forth rules and procedures about company ownership and management, administration, inter-member issues and accounting and tax matters. A limited liability company is considered a legal entity separate and distinct from its members (owners) and has the capacity to conduct any type of lawful business without the need to obtain approval for particular activities. This is the form of choice for a growing number of foreign businesses and investors entering the US market. The entity can be its own US taxpayer, or the members can choose to have the LLC taxes as

a "pass-through" entity, in which case the members must register as US taxpayers and share the profit or less tax results in proportion to their investment or capital accounts. LLCs do not require annual meetings or regular election of directors or officers, but maintaining such corporate formalities from time to time is recommended to avoid imputing liability to the members (owners).

Corporation: Corporations are established under an individual state's law. Corporations also offer limited liability restricted to the amount invested in the company and have a much longer history than LLCs (which entered the US scene in the 1970s), so corporations are governed under longstanding statutes and case law. A corporation owned by non-U.S persons will be taxed as a corporation under US tax rules without the flexibility of choosing the pass-through treatment LLCs allow as a choice. A corporation is the form of choice for many foreign businesses starting a US subsidiary. There are virtually no minimum capital requirements to get one started.

Selecting an LLC over a corporation or vice-versa can have tax consequences, so legal counsel and accountants knowledgeable about cross-border company formation should be consulted about the choice early in the process.

In many cases it is helpful to interject between an Indian company and the US operational entity a holding company. This could be another US entity taxed as a corporation or could be an offshore company that is tax-efficient for both India and the US. Singapore and Mauritius are common jurisdictions chosen for Indian/US holding companies.

ACQUISITIONS AND JOINT VENTURES

The quickest paths to establishing a US presence is to acquire an existing one or to form a strategic alliance with a successful US company. This will provide Indian companies with an immediate US presence, work force, management expertise, distribution channel and familiarity with local conditions.

Acquisitions

Instead of organizing a subsidiary or establishing a branch, an Indian investor or company could acquire the assets or equity of an existing business (the "target"). The acquisition may be done by purchasing the target's assets or equity in exchange for cash or equity of the foreign investor or through a merger. Important tax issues arise from how an acquisition is handled, so early discussions with legal counsel and financial/accounting consultants are essential.

Joint Ventures/Strategic Alliances

Joint ventures may be formed for a single, short -term business event or may contemplate a long-term relationship involving multiple transactions. A joint venture or strategic alliance may be a contract between parties or can be in the form of a legal entity. "Joint venture" is not a type of legal entity but embraces both forms of business alliances. The US is generally a "freedom of contract" jurisdiction, leaving parties wide discretion in defining rights and responsibilities in a written agreement. A 100% acquisition gives an Indian company total control and avoids entanglements with co-owners but is more expensive than a minority or majority stake in an enterprise that involves US co-owners. Neither is better or worse – each is a choice.

IMMIGRATION

One of the major concerns from most Indian companies seeking to conduct business in the United States is with regard to immigration for their existing workforce in India. US immigration law, as you may be aware, is complicated, subject to frequent change, and time-bound. However, there are a number of avenues for investors and companies looking to establish business operations in the United States.

Visitor for Business (B 1): B 1 visas allow Indian nationals to travel temporarily to the US for short-term business purposes such as surveying potential sites, negotiating contracts, consulting with business associates, and participating in professional conventions, conferences, or seminars. However, a B-1 visitor must intend to return to a residence outside the US, and his or her services must benefit an employer whose place of business is primarily outside the US.

Intracompany Transferee (L-1): L-1 visas are available to employees of an Indian company with offices in India and in the US, or a company

that intends to open a new office in the US while maintaining their office(s) in India. There are two categories of employees eligible for L-1 visas: (a) executives or managers and (b) employees who are in positions requiring specialized knowledge. Generally, the L-1 visa will allow an employee to transfer to a US office after having worked in India for the company or a related company for at least one year prior to being granted L-1 status.

Specialty Occupation Worker (H 1B): The H-1B visa is designed for foreign nationals who are employed in "specialty occupations." This is the most commonly used visa and has come under great scrutiny recently. This visa type is fairly flexible and permits any company registered in the US to sponsor a qualified worker for a job requiring specific knowledge equivalent to at least a four-year university degree in a specific field. Only 85,000 new H 1B visas are available each year, and demand vastly exceeds supply. All petitions must be filed on 1st April of any given year, and a randomized lottery process determines who gets to proceed.

A COUNTRY OF CONTRACTS AND RULE OF LAW

Some fear the United States is plagued with lawsuits and 40-page contracts where a handshake should suffice. This is a misperception. It is true that substantial business agreements are quite detailed. This is because the US is far less regulated than most countries and most business obligations are contractual. Virtually non-existent public corruption and strong courts dedicated to promptly enforcing rights and obligations agreed upon by parties combine to make the US a country where business can flourish with confidence that they will be protected. Insurance at affordable rates covers most business risks within a reasonable budget.

CONCLUSION

Every country has its own culture and rules that must be learned by businesses entering that market. CII's 2017 Survey reports that 85% of respondents intend to invest further in the US over the next five years. Unlocking the US market will be challenging because of its competitive nature but businesses should not be hindered by excessive regulation or fear of the unknown.

For further information on Doing Business in the USA, see our Guide at www.fbtglobal.com. ■

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Joe serves as the Frost Brown Todd India Desk Co-Chair. He counsels clients on issues confronting global business, including cross border investment, mergers and acquisitions, joint ventures, global personnel matters, tax, customs and trade issues, structures, distribution and agency agreements and the resolution of international disputes. He represents clients in disputes involving the securities laws and claims involving takeovers, fiduciary duty, fraud, negligence and securities statutes, and is a nationally recognized attorney in structured settlements.

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NOTES

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Building Bridges Between India and the U.S.

12
MARKETS
ACROSS
8
STATES
MORE THAN
500
ATTORNEYS

Frost Brown Todd's India Desk helps Indian businesses locate and grow in the U.S. and North American market, and U.S. companies find the right investments and business partners in India.

INDIA DESK

- Global Personnel
- Product and Services Distribution and Licensing
- Mergers & Acquisitions, Joint Ventures and Direct Investment
- Protecting and Enforcing Global Intellectual Property
- International Trade Compliance
- International Dispute Resolution

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The biggest deals
in Switzerland have
one thing in common.